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Clerk of Circuit Court
Outagamie County
2013CF001074

1 STATE OF WISCONSIN CIRCUIT COURT OUTAGAMIE COUNTY

2 **STATE OF WISCONSIN,**

3 Plaintiff,

4 v. **Case No. 13-CF-1074**

5 **CHONG LENG LEE,**

6 Defendant.

7 **JURY TRIAL - DAY ELEVEN**

9 BEFORE: **HONORABLE GREGORY B. GILL, JR.**
10 Circuit Court Judge, Branch IV
11 Outagamie County Justice Center
 Appleton, WI 54911

12 DATE: **March 9, 2016**

14 APPEARANCES: **CARRIE SCHNEIDER**
15 District Attorney
 Appearing on behalf of the State

16 **ANDREW MAIER and ALEXANDER DUROS**
17 Assistant District Attorneys
 Appearing on behalf of the State

18 **DEBORAH VISHNY and EVAN WEITZ**
19 Attorneys at Law
 Appearing on behalf of the Defendant

20 **CHONG LENG LEE**
21 Defendant
 Appearing in person

22

23

24 Joan Biese
25 Official Reporter, Branch IV
 Outagamie County

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TRANSCRIPT OF PROCEEDINGS

THE COURT: We're on the record in *State of Wisconsin v. Chong Lee*.

Mr. Lee appears in person, along with his counsel, Attorney Evan Weitz and Deja Vishny. Also seated at counsel table appearing under the student practice rule is Mr. Solomon Gatton. Representing the State of Wisconsin, Outagamie County District Attorney Carrie Schneider. Also seated and representing the State, Assistant District Attorneys Andrew Maier and Alex Duros.

We are here -- the evidentiary portion of this proceeding has closed. Yesterday we did conduct our informal jury instruction conference. By and large the parties agreed as to what instructions should be included and what if any modifications should be made to the same. The only requested instruction which was ultimately denied was the request for instruction 305. That was presented by the defense, and again the court felt that was not appropriate for inclusion.

I have provided the parties with the updated instructions as has been agreed upon. And, Attorney Schneider, to the best of your understanding, are these the instructions that have been agreed upon?

1 ATTORNEY SCHNEIDER: Yes, Judge.

2 THE COURT: Attorney Vishny, the same
3 question.

4 ATTORNEY VISHNY: Yes.

5 THE COURT: Okay. Additionally, it is
6 appropriate at this time, Mr. Lee, to conduct a brief
7 colloquy with you, sir, and again I would ask you to
8 raise your right hand.

9 (Judge administers oath to defendant.)

10 THE DEFENDANT: I do.

11 THE COURT: All right. Now, in one of the
12 charges, Mr. Lee, is felony -- felon in possession of
13 a firearm. You do understand that, sir?

14 THE DEFENDANT: Yes, I do.

15 THE COURT: All right. Now, you understand
16 that one of the elements that would need to be
17 established is that you were previously convicted of
18 a felony offense, correct?

19 THE DEFENDANT: Correct.

20 THE COURT: Now, you understand that you
21 have the right to have this jury, that is the twelve
22 people, decide whether or not the State has proved
23 beyond a reasonable doubt that you have been
24 convicted of a felony before the date of the offense
25 on which we are here today. You do understand that?

1 THE DEFENDANT: Yes, I do.

2 THE COURT: Now, you understand that the
3 State has to convince each member of the jury that
4 you have been convicted of a felony before the date
5 of this offense, correct?

6 THE DEFENDANT: Correct.

7 THE COURT: Now, with this stipulation that
8 you've entered into, you're agreeing that I can tell
9 the jury that you've been convicted of a felony
10 before the date of the offense in question today and
11 that they are to accept this fact as being
12 conclusively proved.

13 THE DEFENDANT: Yes.

14 THE COURT: Now, have you had an
15 opportunity previous to this moment to discuss the
16 pros and the cons and the advantages and
17 disadvantages of entering into that stipulation?

18 THE DEFENDANT: I have.

19 THE COURT: Are you satisfied that you've
20 had enough time to discuss that issue with your
21 attorneys, sir?

22 THE DEFENDANT: Yes.

23 THE COURT: Has anyone pressured you or
24 threatened you in any way or made promises to get you
25 to agree or enter into that stipulation?

1 THE DEFENDANT: No.

2 THE COURT: And are you entering into and
3 have you entered into that stipulation based on your
4 own free will?

5 THE DEFENDANT: Yes, I have.

6 THE COURT: Have you had enough time to
7 make your decision?

8 THE DEFENDANT: Yes, I have.

9 THE COURT: And, Attorneys Vishny and
10 Weitz, are you satisfied that Mr. Lee thoroughly
11 understands his right to enter into the agreement
12 regarding his prior conviction and likewise his right
13 to not enter into that agreement?

14 ATTORNEY VISHNY: Yes.

15 THE COURT: And are you satisfied that Mr.
16 Lee is entering into this agreement freely,
17 voluntarily and intelligently and knowingly?

18 ATTORNEY VISHNY: Yes.

19 THE COURT: Okay. With that, and based
20 upon the comments of Mr. Lee, as well as
21 representations of counsel, I do find that Mr. Lee
22 has entered into that stipulation freely, voluntarily
23 and intelligently and knowingly. And so, therefore,
24 the court does accept that stipulation.

25 With that, are we prepared to bring the jury in?

1 And again, my anticipated course of events would be I
2 will read the instructions. Again, I would ask that
3 counsel follow along. If you see any issue, I think
4 we've covered them all, but if you do see something;
5 please notify me immediately so that we can address
6 that issue. Once we have completed the instructions,
7 I would anticipate we will do a brief five minutes to
8 get everybody ready for arguments. Miss Schneider,
9 you would complete and perform your closing argument,
10 again, the five-minute break to allow, Attorney
11 Vishny, you an opportunity to get ready for yours.
12 If it's more minutes --

13 ATTORNEY VISHNY: Yeah. I would prefer
14 that we tell the jury ten because I -- you know, I
15 don't -- I want them to expect something longer and
16 be happier because we have quite a few exhibits we're
17 going to have to get together to do it.

18 THE COURT: I think at this point they're
19 just happy if five minutes means thirty. In any
20 event, I will give them a notification of a little --
21 a little more time. And then, after that, there
22 would be a similar short break for you, Attorney
23 Schneider, to then perform your rebuttal.

24 ATTORNEY SCHNEIDER: Thank you.

25 ATTORNEY WEITZ: One other matter before we

1 bring in the jury, Your Honor. Yesterday we had
2 talked about that we agreed that we could move items
3 that had not been moved into evidence yet into
4 evidence today.

5 THE COURT: Correct.

6 ATTORNEY WEITZ: So I went through and made
7 notes. So at this time the defense would move Items
8 5 --

9 THE COURT: Do you have --

10 ATTORNEY SCHNEIDER: Yes. She did just
11 give us that.

12 ATTORNEY WEITZ: 100, 106, 107, 111, 112,
13 113, 114, 118, 128, 132, 141, 142, 143, 146, 147,
14 149, 153, 154, 155, 156, 157, 158, 161, 162, 163,
15 164, 165, 176, 177, 178, 179, 180, 181, 182, 189, 194
16 and 198. And many of those were transcripts, so we
17 would move those to the extent that they were
18 referenced during the trial.

19 THE COURT: I'll give opposing counsel a
20 chance just to catch up if they need to.

21 ATTORNEY SCHNEIDER: And I -- the only
22 ones -- and I don't know if 122 was mentioned, so we
23 would move in 122. I think 126, 127, those were not
24 mentioned so I would move those in. Actually I'm
25 going to just go over by the clerk, Judge, if that's

1 easier. I think, Judge, what the State would move
2 in, and the clerk is going to just cross-check to
3 verify this, we would move in 44, 72 -- let me go
4 back. 61 through 69, 74, 94, 122, 126, 127, 136
5 through 140, and 199 through 203. And then I think
6 we've got everything in but for there were a couple
7 things that were marked but not used by either party,
8 but we'll just have the clerk double-check that if
9 you don't mind at the end.

10 THE COURT: And if you -- either way, if
11 you're ready to make -- either way, if you're
12 prepared to look at that now or to decide whether
13 there's any objections to receipt of those, that's
14 fine. If you need some time, that's fine as well.

15 ATTORNEY SCHNEIDER: We don't object to
16 anything they moved in. I just wanted to make sure
17 we didn't miss a number in that sequence.

18 THE COURT: No. Exactly.

19 ATTORNEY VISHNY: That's fine.

20 ATTORNEY WEITZ: We don't have any.

21 THE COURT: All mentioned exhibits will be
22 received.

23 Are we prepared to bring in the jury at this
24 time?

25 ATTORNEY SCHNEIDER: Yes.

1 THE COURT: All right. All rise please.

2 (The jury was escorted into the courtroom.)

3 THE COURT: Please be seated.

4 Okay. As I had indicated to you yesterday, we
5 have completed the evidentiary portion of these
6 proceedings, and so now it is my opportunity to
7 instruct you on the principles of law that will guide
8 you, after which time you will then hear the closing
9 arguments from the respective counsel. And so, with
10 that, we will now begin with those instructions.

11 As I had mentioned, the court will now instruct
12 you upon the principles of law which you are to
13 follow in reaching the evidence and in reaching your
14 verdict.

15 It is your duty to follow all of these
16 instructions regardless of any opinion that you may
17 have about what the law is or ought to be. You must
18 base your verdict on the law that I give you in these
19 instructions, apply that law to the facts in the case
20 which have been properly proven by the evidence.
21 Consider only the evidence received during this trial
22 and the law as given to you by these instructions,
23 and from these alone, guided by your soundest reason
24 and best judgment, reach your verdict.

25 If any member of the jury has an impression of

1 my opinion as to whether or not the defendant is
2 guilty or not guilty, disregard that impression
3 entirely and decide the issues of fact solely as you
4 view the evidence. You the jury are the sole judges
5 of the facts, and the court is the judge of the law
6 only.

7 Now, evidence is: First, the sworn testimony of
8 witnesses, both on direct and cross-examination,
9 regardless of who may have called the witness;
10 second, the exhibits the court has received, whether
11 or not an exhibit goes to the jury room; third, any
12 facts to which the lawyers have agreed or stipulated
13 or which the court has directed you to find.

14 Anything you may have seen or heard outside the
15 courtroom is not evidence. You are to decide the
16 case solely on the evidence offered and received at
17 trial.

18 In reaching your verdicts, examine the evidence
19 with care and caution. Act with judgment, reason and
20 prudence.

21 Defendants are not required to prove their
22 innocence. The law presumes every person charged
23 with the commission of an offense to be innocent.
24 This presumption requires a finding of not guilty
25 unless in your deliberations you find it is overcome

1 by evidence which satisfies you beyond a reasonable
2 doubt that the defendant is guilty.

3 The burden of establishing every fact necessary
4 to constitute guilt is upon the State. Before you
5 can return a verdict of guilty, the evidence must
6 satisfy you beyond a reasonable doubt that the
7 defendant is guilty.

8 If you can reconcile the evidence upon any
9 reasonable hypothesis consistent with the defendant's
10 innocence you should do so and return a verdict of
11 not guilty.

12 The term reasonable doubt means a doubt based on
13 reason and common sense. It is a doubt for which a
14 reason can be given arising from a fair and rational
15 consideration of the evidence or lack of evidence.
16 It means such a doubt as would cause a person of
17 ordinary prudence to pause or hesitate when called
18 upon to act in the most important affairs of life.

19 A reasonable doubt is not a doubt which is based
20 upon mere guesswork or speculation. A doubt which
21 arises merely from sympathy or from fear to return a
22 verdict of guilt is not a reasonable doubt. A
23 reasonable doubt is not a doubt such as may be used
24 to escape the responsibility of a decision.

25 While it is your duty to give the defendant the

1 benefit of every reasonable doubt, you are not to
2 search for doubt.

3 Now, the identification of the defendant is an
4 issue in this case and you should give it your
5 careful attention. You should consider the
6 reliability of any identification made by a witness
7 regardless -- whether made in or out of court. You
8 should consider the credibility of a witness making
9 an identification of the defendant in the same way
10 you determine or consider the credibility of any
11 other witness.

12 Identification evidence involves an expression
13 of belief or impression by the witness. Its value
14 depends on the opportunity the witness had to observe
15 the offender at the time of the offense and later to
16 make a reliable identification.

17 Consider the witness's opportunity for
18 observation, how long the observation lasted, how
19 close the witness was, the lighting, the mental state
20 of the witness at the time, the physical ability of
21 the witness to see and hear the events, and any other
22 circumstances of the observation.

23 You should also consider the period of time
24 which elapsed between the witness's observation and
25 the identification of the defendant and any

1 intervening events which may have affected or
2 influenced the identification.

3 In evaluating the identification evidence, you
4 are to consider those factors which might affect
5 human perception and memory and all the influences
6 and circumstances relating to the identification.
7 Then give the evidence the weight you believe it
8 should receive.

9 If you find the crime alleged was committed,
10 before you may find the defendant guilty, you must be
11 satisfied beyond a reasonable doubt that the
12 defendant is the person who committed the crime.

13 Now, an information is nothing more than a
14 written formal accusation against a defendant
15 charging the commission of one or more criminal acts.
16 You are not to consider it as any evidence against
17 the defendant in any way. It does not raise any
18 inference of guilt.

19 Now, the first count of the information in this
20 case charges that the defendant, on or about Sunday,
21 December 8th of 2013, in the City of Appleton,
22 Outagamie County, Wisconsin, did cause the death of
23 Joshua Richards with the intent to kill that person
24 contrary to Wisconsin statutes.

25 To this charge, the defendant has entered a plea

1 of not guilty which means that the State must prove
2 every element of the offense charged beyond a
3 reasonable doubt.

4 Now, the crime referred to -- I'm sorry -- as
5 mentioned, the defendant in this case is charged with
6 first-degree intentional homicide and you must first
7 consider whether the defendant is guilty of that
8 offense. If you are not satisfied the defendant is
9 guilty of first-degree intentional homicide, you must
10 consider whether or not the defendant is guilty of
11 first-degree reckless homicide which is a less
12 serious degree of criminal homicide.

13 The crimes referred to as first-degree
14 intentional and first-degree reckless homicide are
15 different types of homicide. Homicide is the taking
16 of the life of another human being. The degree of
17 homicide defined by the law depends on the facts and
18 circumstances of each particular case.

19 Both intentional and reckless homicide require
20 that the defendant caused the death of the victim.
21 First-degree intentional homicide requires that the
22 State prove that the defendant acted with the intent
23 to kill. First-degree reckless homicide requires
24 that the defendant acted recklessly under
25 circumstances which show utter disregard for human

1 life. It is for you to decide of what type of
2 homicide the defendant is guilty, if guilty at all,
3 according to the instructions which define the two
4 offenses.

5 First-degree intentional homicide is defined in
6 Wisconsin statutes of the Criminal Code as committed
7 by one who causes the death of another human being
8 with the intent to kill that person or another.

9 Before you may find the defendant guilty of
10 first-degree intentional homicide, the State must
11 prove by evidence which satisfies you beyond a
12 reasonable doubt that the following two elements were
13 present.

14 The defendant caused the death of Joshua
15 Richards.

16 Cause means that the defendant's act was a
17 substantial factor in producing death.

18 Two, the defendant acted with the intent to kill
19 Joshua Richards.

20 Intent to kill means that the defendant had the
21 mental purpose to take the life of another human
22 being or was aware that his conduct was practically
23 certain to cause the death of another human being.

24 While the law requires that the defendant acted
25 with intent to kill, it does not require that the

1 intent exist for any particular length of time before
2 the act is committed. The act not be brooded over,
3 considered or reflected upon for a week, a day, an
4 hour, or even a minute. There need not be any
5 appreciable time between the information (sic) of the
6 intent -- I'm sorry, between the formation of the
7 intent and the act. The intent to kill may be formed
8 at any time before the act, including the instant
9 before the act, and must continue to exist at the
10 time of the act.

11 You cannot look into a person's mind to find
12 intent. Intent to kill must be found, if found at
13 all, from the defendant's acts, words and statements,
14 if any, and from all the facts and circumstances in
15 this case bearing upon intent.

16 Intent should not be confused with motive.
17 While proof of intent is necessary to a conviction,
18 proof of motive is not. Motive refers to a person's
19 reason for doing something. While motive may be
20 shown as a circumstance to aid in establishing the
21 guilt of a defendant, the State is not required to
22 prove motive on the part of a defendant in order to
23 convict. Evidence of motive by itself does not
24 establish guilt. You should give it the weight you
25 believe it deserves under all of the circumstances.

1 If you are satisfied beyond a reasonable doubt
2 that the defendant caused the death of Joshua
3 Richards with the intent to kill, you should find the
4 defendant guilty of first-degree intentional
5 homicide.

6 If you are not so satisfied, you must find the
7 defendant not guilty of first-degree intentional
8 homicide and you should consider -- if you are not so
9 satisfied you must find the defendant not guilty of
10 first-degree intentional homicide and you should
11 consider whether the defendant is guilty of
12 first-degree reckless homicide in violation of
13 Wisconsin statutes which is a lesser included offense
14 of first-degree intentional homicide.

15 You should make every reasonable effort to agree
16 unanimously on the charge of first-degree intentional
17 homicide before considering the offense of
18 first-degree reckless homicide. However, if after
19 full and complete consideration of the evidence you
20 conclude that further deliberation would not result
21 in a unanimous agreement on the charge of
22 first-degree intentional homicide, you should
23 consider whether the defendant is guilty of
24 first-degree reckless homicide.

25 First-degree reckless homicide, as defined in

1 Wisconsin statutes, is committed by one who
2 recklessly causes the death of another human being
3 under circumstances that show utter disregard for
4 human life.

5 Before you may find the defendant guilty of
6 first-degree reckless homicide, the State must prove
7 by evidence which satisfies you beyond a reasonable
8 doubt that the following three elements were present:

9 One, the defendant caused the death of Joshua
10 Richards.

11 Cause means that the defendant's act was a
12 substantial factor in producing death.

13 Two, the defendant caused the death by
14 criminally reckless conduct.

15 Criminally reckless conduct means the conduct
16 created a risk of death or great bodily harm to
17 another person, and the risk of death or great bodily
18 harm was unreasonable and substantial, and the
19 defendant was aware that his conduct created the
20 unreasonable and substantial risk of death or great
21 bodily harm.

22 Three, the circumstances of the defendant's
23 conduct showed utter disregard for human life.

24 In determining whether the circumstances of the
25 conduct showed utter disregard for human life,

1 consider these factors: What the defendant was
2 doing; why the defendant was engaged in that conduct;
3 how dangerous the conduct was; how obvious the danger
4 was; whether the conduct showed any regard for life;
5 and all other facts and circumstances relating to the
6 crime.

7 Consider also the defendant's conduct after the
8 death to the extent it helps you decide whether or
9 not the circumstances showed utter disregard for
10 human life at the time the death occurred.

11 If you are satisfied beyond a reasonable doubt
12 that the defendant caused the death of Joshua
13 Richards by criminally reckless conduct and that the
14 circumstances of the conduct showed utter disregard
15 for human life, you should find the defendant guilty
16 of first-degree reckless homicide.

17 If you are not so satisfied, you must find the
18 defendant not guilty.

19 You are not, in any event, to find the defendant
20 guilty of more than one offense.

21 Now, the information alleges not only that the
22 defendant committed the crime of first-degree
23 intentional homicide but also that the defendant -
24 I'm sorry, let me back up - first-degree intentional
25 homicide, the lesser included being the first-degree

1 reckless homicide, but also that the defendant did so
2 while using a dangerous weapon.

3 If you find the defendant guilty, you must
4 answer the following question:

5 Did the defendant commit the crime of
6 first-degree intentional homicide or first-degree
7 reckless homicide while using a dangerous weapon.

8 Dangerous weapon means any firearm, whether
9 loaded or unloaded. A firearm is a weapon that acts
10 by force of gunpowder. Before you answer this
11 question yes, you must be satisfied beyond a
12 reasonable doubt that the defendant committed the
13 crime while using a dangerous weapon.

14 If you are not so satisfied, you must answer the
15 question no. The second count of the information
16 charges that the defendant, on or around Sunday,
17 December 8th, 2013, in the City of Appleton,
18 Outagamie County, Wisconsin, did possess a firearm
19 subsequent to the conviction of a felony or other
20 crime as specified in Wisconsin statutes.

21 To this charge the defendant has also entered a
22 plea of not guilty which means that the State must
23 prove every element of the offense charged beyond a
24 reasonable doubt.

25 Now, before you may find the defendant guilty of

1 this offense, the State must prove by evidence which
2 satisfies you beyond a reasonable doubt that the
3 following element was present:

4 The defendant possessed a firearm.

5 Firearm means a weapon which acts by the force
6 of gunpowder.

7 Possess means that the defendant knowingly had
8 actual physical control of a firearm.

9 The parties have agreed that the defendant was
10 convicted of a felony before December 8th of 2013 and
11 you must accept this as conclusively proved.

12 If you are satisfied beyond a reasonable doubt
13 that the element of this offense has been proved, you
14 should find the defendant guilty.

15 If you are not so satisfied, you must find the
16 defendant not guilty.

17 Now, evidence has been presented that the
18 defendant was previously convicted of a felony for
19 which the defendant is not on trial.

20 You may consider this evidence only for the
21 purpose of determining whether or not the defendant
22 is guilty of possession of a firearm by a convicted
23 felon. It is not to be used to conclude that the
24 defendant is a bad person and for that reason is
25 guilty of the other offenses charged.

1 Now, Counts 3 through 6 allege that the
2 defendant, on or about December 12th of 2013 through
3 February 12th of 2014, Outagamie County, Wisconsin,
4 as a party to the crime, knowingly and maliciously
5 did attempt to prevent or dissuade a witness from
6 attending or giving testimony at a trial, proceeding
7 or inquiry authorized by law where the act is
8 committed by a person who is charged with a felony in
9 connection with a trial, proceeding or inquiry for
10 that crime.

11 Now, Section 939.05 of the Criminal Code
12 provides that whoever is concerned in the commission
13 of a crime is a party to that crime and may be
14 convicted of that crime although the person did not
15 directly commit it.

16 The State contends that the defendant was
17 concerned in the commission of the crime of
18 intimidation of a witness by either directly
19 committing it or by intentionally aiding and abetting
20 the person who directly committed it. If a person
21 intentionally aids and abets the commission of a
22 crime, then that person is guilty of the crime as
23 well as the person who directly committed it.

24 A person intentionally aids and abets the
25 commission of a crime when acting with the knowledge

1 or belief that another person is committing or
2 intends to commit a crime, he knowingly either
3 assists the person who commits the crime or is ready
4 and willing to assist and the person who commits the
5 crime knows of the willingness to assist.

6 To intentionally aid and abet intimidation of a
7 witness, the defendant must know that the other
8 person is committing or intends to commit the crime
9 of intimidation of a witness and have the purpose to
10 assist the commission of that crime.

11 Before you find the defendant guilty -- or
12 before you may find the defendant guilty, the State
13 must prove by evidence which satisfies you beyond a
14 reasonable doubt that the defendant directly
15 committed the crime of intimidation of a witness or
16 intentionally aided and abetted the commission of
17 that crime.

18 All twelve jurors do not have to agree whether
19 the defendant directly committed the crime or aided
20 and abetted the commission of the crime; however,
21 each juror must be convinced beyond a reasonable
22 doubt that the defendant was concerned in the
23 commission of the crime in one of those ways.

24 Intimidation of a witness, as defined by
25 Wisconsin statutes, is committed by one who knowingly

1 and maliciously attempts to prevent or dissuade any
2 witness from attending or giving testimony at any
3 trial, proceeding or inquiry authorized by law.

4 Before you may find the defendant guilty of each
5 of these offenses, the State must prove by evidence
6 which satisfies you beyond a reasonable doubt that
7 the following three elements were present:

8 As to Count 3, Paul Lee was a witness.

9 Witness means any person who has been called to
10 testify or who is expected to be called to testify.

11 Two, the defendant attempted to prevent Paul Lee
12 from attending or giving testimony at a proceeding
13 authorized by law.

14 A preliminary hearing is a proceeding authorized
15 by law.

16 Three, the defendant acted knowingly and
17 maliciously.

18 This requires that the defendant knew Paul Lee
19 was a witness and that the defendant acted with the
20 purpose to prevent Paul Lee from attending or
21 testifying.

22 ATTORNEY WEITZ: Your Honor, could we
23 approach?

24 THE COURT: You may.

25 (Bench conference.)

1 THE COURT: You cannot look into a person's
2 mind to find intent. Intent must be found, if found
3 at all, from the defendant's acts, words and
4 statements, if any, and from all the facts and
5 circumstances in this case bearing upon intent.

6 If you are satisfied beyond a reasonable doubt
7 that the defendant directly committed all three
8 elements of intimidation of a witness or that the
9 defendant intentionally aided and abetted the
10 commission of that crime, you should find the
11 defendant not guilty -- guilty -- you should find the
12 defendant guilty and answer the following question
13 yes or no. If you are not so satisfied, you must
14 answer -- you must find the defendant not guilty.

15 If you find the defendant guilty, you must
16 answer the following question:

17 Did the defendant commit the act in connection
18 with a trial, proceeding or inquiry in a felony case
19 in which he was charged.

20 If you are satisfied beyond a reasonable doubt
21 that the defendant committed the act in connection
22 with a trial, proceeding or inquiry in a felony case
23 in which he was charged, you should answer the
24 question yes.

25 If you are not so satisfied, you must answer the

1 question no.

2 As to Count 4, the State would have to prove
3 that Joe Thor was a witness.

4 Witness means any person who has been called to
5 -- has been -- who has been called to testify or who
6 is expected to be called to testify.

7 Two, the defendant attempted to prevent Joe Thor
8 from attending or giving testimony at a proceeding
9 authorized by law.

10 A preliminary hearing is a proceeding authorized
11 by law.

12 Three, the defendant acted knowingly and
13 maliciously.

14 This requires that the defendant knew Joe Thor
15 was a witness and that the defendant acted with the
16 purpose to prevent Joe Thor from attending or
17 testifying.

18 You cannot look into a person's mind to find
19 intent. Intent must be found, if at all, from the
20 defendant's acts, words and statements, if any, and
21 from all of the facts and circumstances in the case
22 bearing upon intent.

23 If you are so satisfied beyond a reasonable
24 doubt that the defendant directly committed all three
25 elements of intimidation of a witness or that the

1 defendant intentionally aided and abetted the
2 commission of that crime, you should find the
3 defendant guilty and answer the following question
4 yes or no. If you are not so satisfied, you must
5 find the defendant not guilty.

6 Again, the following question upon a finding of
7 guilt is:

8 Did the defendant commit the act in connection
9 with a trial, proceeding or inquiry in a felony case
10 in which he was charged.

11 If you are satisfied beyond a reasonable doubt
12 that the defendant committed the act in connection
13 with a trial, proceeding or inquiry in a felony case
14 in which he was charged, you should answer the
15 question yes.

16 If you are not so satisfied, you must answer the
17 question no. As to Count 5 -- and I should mention,
18 as to Counts 3 and 4, as well as Count 5, to those
19 charges the defendant has entered a plea of not
20 guilty which again means the State must prove every
21 element of those offenses charged beyond a reasonable
22 doubt.

23 As to Count 5, the State must prove that Melanie
24 Thao was a witness.

25 Witness means any person who has been called to

1 testify or who is expected to be called to testify.

2 Two, the defendant attempted to prevent Melanie
3 Thao from attending or giving testimony at a
4 proceeding authorized by law.

5 A preliminary hearing is a proceeding authorized
6 by law.

7 Three, the defendant acted knowingly and
8 maliciously.

9 This requires that the defendant knew Melanie
10 Thao was a witness and that the defendant acted with
11 the purpose to prevent Melanie Thao from attending or
12 testifying.

13 You cannot look into a person's mind to find
14 intent. Intent must be found, if found at all, from
15 the defendant's acts, words and statements, if any,
16 and from all of the facts and circumstances in this
17 case bearing upon intent.

18 If you are so satisfied beyond a reasonable
19 doubt that the defendant directly committed all three
20 elements of intimidation of a witness or that the
21 defendant intentionally aided and abetted the
22 commission of that crime, you should find the
23 defendant guilty and answer the following question
24 yes or no.

25 Again, if you are not so satisfied, you must

1 find the defendant not guilty.

2 But the following question again is:

3 Did the defendant commit the act in connection
4 with a trial, proceeding or inquiry in a felony case
5 in which he was charged.

6 If you are satisfied beyond a reasonable doubt
7 that the defendant committed the act in connection
8 with a trial, proceeding or inquiry in a felony case
9 in which he was charged, you should answer the
10 question yes.

11 If you are not so satisfied, you must answer the
12 question no.

13 Now, the sixth count of the information again is
14 similar to Counts 3, 4 and 5. And again, to Count 6,
15 the defendant has also entered a plea of not guilty
16 which means the State must prove every element of the
17 offense charged beyond a reasonable doubt.

18 As to Count 6, the State must prove that
19 Stephanie Thao was a witness.

20 Witness, again, means any person who has been
21 called to testify or who is expected to be called to
22 testify.

23 Two, the defendant attempted to prevent
24 Stephanie Thao from attending or giving testimony at
25 a proceeding authorized by law.

1 A preliminary hearing is a proceeding authorized
2 by law.

3 Three, the defendant acted knowingly and
4 maliciously.

5 This requires that the defendant knew Stephanie
6 Thao was a witness and that the defendant acted with
7 a purpose to prevent Stephanie Thao from attending or
8 testifying.

9 You cannot look in a person's mind to find
10 intent. Intent must be found, if found at all, from
11 the defendant's acts, words and statements, if any,
12 and from all the facts and circumstances in this case
13 bearing upon intent.

14 If you are satisfied beyond a reasonable doubt
15 that the defendant directly committed all three
16 elements of intimidation of a witness or that the
17 defendant intentionally aided and abetted the
18 commission of that crime, you should find the
19 defendant guilty and answer the following question
20 yes or no.

21 Again, if you are not satisfied, you must find
22 the defendant not guilty.

23 The following question is:

24 Did the defendant commit the act in connection
25 with a trial, proceeding or inquiry in a felony case

1 in which he was charged.

2 If you are satisfied beyond a reasonable doubt
3 that the defendant committed the act in connection
4 with a trial, proceeding or inquiry in a felony case
5 in which he was charged, you should answer the
6 question yes.

7 If you are not so satisfied, you must answer the
8 question no.

9 Now, an exhibit becomes evidence only when
10 received by the court. An exhibit marked for
11 identification and not received is not evidence. An
12 exhibit received is evidence whether or not it goes
13 to the jury room.

14 The District Attorney and the attorney for the
15 defense have stipulated or agreed to the existence of
16 certain facts, and you must accept those facts as
17 conclusively proved.

18 You are to disregard any question that the court
19 did not allow to be answered. Do not guess at what
20 the witness's answer might have been. If the
21 question itself suggested that certain information
22 might be true, ignore the suggestion and do not
23 consider it as evidence.

24 During the trial, the court has ordered certain
25 testimony to be stricken. Disregard all stricken

1 testimony.

2 Remarks of the attorneys are not evidence. If
3 the remarks suggested certain facts not in evidence,
4 disregard the suggestion.

5 Consider carefully the closing arguments of the
6 attorneys, but their arguments and conclusions and
7 opinions are not evidence. Draw your own conclusions
8 from the evidence and decide upon your verdict
9 according to the evidence under the instructions
10 given to you by the court.

11 It is not necessary that every fact be proved
12 directly by a witness or an exhibit. A fact may be
13 proved indirectly by circumstantial evidence.
14 Circumstantial evidence is evidence from which a jury
15 may logically find other facts according to common
16 sense and -- common knowledge and experience.

17 Circumstantial evidence is not necessarily
18 better or worse than direct evidence. Either type of
19 evidence can prove a fact.

20 Whether evidence is direct or circumstantial, it
21 must find -- it must satisfy you beyond a reasonable
22 doubt that the defendant committed the offense before
23 you may find the defendant guilty.

24 Now, evidence has been presented related to the
25 defendant's conduct after the alleged crime was

1 committed. Whether the evidence shows a
2 consciousness of guilt and whether consciousness of
3 guilt shows actual guilt are matters exclusively for
4 you to decide.

5 Now, intent should not be confused with motive.
6 While proof of intent is necessary to a conviction,
7 proof of motive is not.

8 Motive refers to a person's reason for doing
9 something. While motive may be shown as a
10 circumstance to aid in establishing the guilt of a
11 defendant, the State is not required to prove motive
12 on the part of a defendant in order to convict.
13 Evidence of motive does not by itself establish
14 guilt, and you should give it the weight you believe
15 it deserves under all of the circumstances.

16 Now, the State has introduced evidence of
17 statements which it claims were made by the
18 defendant. It is for you to determine how much
19 weight, if any, to give each statement.

20 In evaluating each statement you must determine
21 three things:

22 Whether the statement was actually made by the
23 defendant. Only so much of a statement as was
24 actually made by a person may be considered as
25 evidence.

1 Whether the statement was accurately restated
2 here at trial.

3 Whether the statement or any part of it ought to
4 be believed.

5 You should consider the facts and circumstances
6 surrounding the making of each statement along with
7 all of the other evidence in determining how much
8 weight, if any, the statement deserves.

9 The weight of evidence does not depend on the
10 number of witnesses on each side. You may find that
11 the testimony of one witness is greater -- is
12 entitled to greater weight than that of another
13 witness or even of several other witnesses.

14 In weighing the evidence you may take into
15 account matters of your common knowledge and your
16 observations and experience in the affairs of life.

17 Now, attorneys for each side have the right and
18 the duty to object to what they consider are improper
19 questions asked of witnesses and to the admission of
20 other evidence which they believe is not properly
21 admissible. You should not draw any conclusions from
22 the fact an objection was made.

23 By allowing testimony or other evidence to be
24 received over the objection of counsel, the court is
25 not indicating any opinion about the evidence. You

1 jurors are the judges of the credibility of the
2 witnesses and the weight of the evidence.

3 Now, if you find that the offense -- the offense
4 charged was committed by the defendant, it is not
5 necessary for the State to prove that the offense was
6 committed on the precise date alleged in the
7 information. If the evidence shows beyond a
8 reasonable doubt that the offense was committed on a
9 date near the date alleged, that is sufficient.

10 Now, it is the duty of the jury to scrutinize
11 and to weigh the testimony of witnesses and to
12 determine the effect of the evidence as a whole. You
13 are the sole judges of credibility, that is, the
14 believability of the witnesses and of the weight to
15 be given to their testimony.

16 In determining the credibility of each witness
17 and the weight you give to the testimony of each
18 witness, consider these factors:

19 Whether the witness has an interest or lack of
20 interest in the result of this trial;

21 The witness's conduct, appearance and demeanor
22 on the witness stand;

23 The clearness or lack of clearness of the
24 witness's recollections;

25 The opportunity the witness had for observing

1 and for knowing the matters the witness testified
2 about;

3 The reasonableness of the witness's testimony;

4 The apparent intelligence of the witness;

5 Bias or prejudice, if any has been shown;

6 And possible motives for falsifying testimony;

7 And all other facts and circumstances during the
8 trial which tend either to support or to discredit
9 the testimony.

10 Then give to the testimony of each witness the
11 weight you believe it should receive.

12 There is no magic way for you to evaluate the
13 testimony. Instead, you should use your common sense
14 and experience. In everyday life you determine for
15 yourselves the reliability of things people say to
16 you, and you should do the same thing here.

17 Now, evidence has been received that one of the
18 witnesses in this trial has been convicted of crimes.
19 The evidence was received solely because it bears
20 upon the credibility of the witness. It must not be
21 used for any other purpose.

22 Now, a defendant in a criminal trial has the
23 absolute constitutional right not to testify.

24 The defendant's decision not to testify must not
25 be considered by you in any way and must not

1 influence your verdict in any manner.

2 You are to decide this case fairly and
3 impartially.

4 You are to decide only whether the defendant is
5 guilty or not guilty of the offenses charged. Any
6 consequences of your verdict are matters for the
7 court alone to decide and must not affect your
8 deliberations.

9 Before I turn it over to closing arguments, I do
10 want to reread one instruction to you, and that again
11 is the burden of proof and the presumption of --

12 ATTORNEY VISHNY: Judge, can we approach?

13 THE COURT: You may.

14 (Bench conference.)

15 THE COURT: Okay. And I was -- I was
16 corrected. I have three instructions to read to you.

17 The first is ordinarily a witness may testify
18 only about facts. However, a witness with expertise
19 in a particular field may give an opinion in that
20 field.

21 In determining the weight to give to this
22 opinion you should consider the qualifications and
23 credibility of the witness, the facts upon which the
24 opinion is based, and the reason given for that
25 opinion.

1 Opinion evidence was received to help you reach
2 a conclusion. However, you are not bound by any
3 expert's opinion.

4 Now, I'd also informed you about objections, but
5 additionally I should mention to you that attorneys
6 for each side have the right and the duty to object
7 to what they consider are improper questions asked of
8 witnesses and to the admission of other evidence
9 which they believe is not properly admissible. You
10 should not draw any conclusions from the fact an
11 objection was made.

12 By allowing testimony or other evidence to be
13 received over the objection of counsel, the court is
14 not indicating any opinion about the evidence. You
15 the jurors are the judges of the credibility of the
16 witness and the weight of the testified evidence.

17 Finally, I'm going to reread to you the burden
18 of proof and the presumption of innocence.

19 In reaching your verdicts examine the evidence
20 with care and caution. Act with judgment, reason and
21 prudence.

22 Defendants are not required to prove their
23 innocence. The law presumes every person charged
24 with the commission of an offense to be innocent.
25 This presumption requires a finding of not guilty

1 unless in your deliberations you find it is overcome
2 by evidence which satisfied you beyond a reasonable
3 doubt that the defendant is guilty.

4 The burden of establishing every fact necessary
5 to constitute guilt is upon the State. Before you
6 can return a verdict of guilty, the evidence must
7 satisfy you beyond a reasonable doubt that the
8 defendant is guilty. If you can reconcile the
9 evidence upon any reasonable hypothesis consistent
10 with the defendant's innocence, you should do so and
11 return a verdict of not guilty.

12 The term reasonable doubt means a doubt based
13 upon reason and common sense. It is a doubt for
14 which a reason can be given arising from a fair and
15 rational consideration of the evidence or lack of
16 evidence. It means such a doubt as would cause a
17 person of ordinary prudence to pause or hesitate when
18 called upon to act in the most important affairs of
19 life.

20 A reasonable doubt is not a doubt which is based
21 on sympathy, guesswork or speculation. A doubt which
22 arises merely from sympathy or from fear to return a
23 verdict of guilt is not a reasonable doubt. A
24 reasonable doubt is not a doubt such as may be used
25 to escape the responsibility of a decision.

1 Now, while it is your duty to give the defendant
2 the benefit of every reasonable doubt, you are not to
3 search for doubt, you are to search for the truth.

4 With that, any -- counsel need to approach on
5 anything?

6 ATTORNEY VISHNY: No.

7 ATTORNEY WEITZ: No, Your Honor.

8 THE COURT: Attorney Schneider, do you need
9 a few moments before we go directly into --

10 ATTORNEY SCHNEIDER: Maybe for a bathroom
11 break, so just five.

12 THE COURT: We will take a brief restroom
13 break and be ready for closing arguments momentarily.

14 Please rise for the jury.

15 (The jury was escorted out of the
16 courtroom.)

17 ATTORNEY SCHNEIDER: During the time when
18 you were reading, someone in the back was either
19 answering a call or on their cell phones, so I'm just
20 going to ask that you remind everybody there should
21 be no cell phone use while the parties are giving
22 closing argument.

23 THE COURT: Yes. I'd ask that everyone
24 turn off their cell phones please.

25 And then, likewise, the gallery has been

1 wonderful up to this point, but just because this is
2 the last opportunity for the jury to hear from
3 respective counsel, that everyone maintain
4 appropriate courtroom decorum and remain silent
5 during the presentations.

6 We can bring in the jury.

7 (The jury was escorted into the courtroom.)

8 THE COURT: Please be seated.

9 Attorney Schneider, are you prepared to proceed?

10 ATTORNEY SCHNEIDER: Yes, Your Honor.

11 Thank you.

12 First and foremost, I need to thank each one of
13 you for your time and your attention that you've
14 given this case over the last several days.

15 Your job is really now about to begin. It is a
16 job in which you've taken the time over the last
17 several days of testimony to listen to the witnesses,
18 to examine exhibits, review them, listen to
19 witnesses' statements, look at items we've shown you,
20 and really now it turns for you to render a verdict
21 in this case.

22 As I think I said to you in openings, it's one
23 of the reasons why we stand when you enter the room.
24 We give you that same respect because you are going
25 to decide the verdicts in this case, the same respect

1 we give when the judge enters the courtroom.

2 Closing arguments are really kind of like a
3 wrap-up or a snapshot of the evidence and testimony
4 that you've heard over the last several days.
5 Because this case has been as long as it has taken us
6 to present all the witnesses and the testimony to
7 you, it is going to take a little bit of time to give
8 you that snapshot. It is a job in rendering this
9 verdict I know you will take significantly, you will
10 consider it, be careful and deliberate.

11 As the judge has instructed you, in this case
12 the State has chosen and has charged the defendant,
13 Chong Lee, with the crime of first-degree intentional
14 homicide for causing the death of Joshua Richards
15 back on December 8th, 2013. There are additional
16 charges of possession of a firearm by a felon and
17 then four counts of intimidation of a witness, one
18 count related to Paul Lee, one count for Joe Thor,
19 one count for Stephanie Thao, and one count for
20 Melanie Thao.

21 Before I start reviewing with you the facts and
22 the evidence we've heard about those offenses, I want
23 to review with you the elements, briefly, of the
24 offenses.

25 First-degree intentional homicide. December

1 8th, 2013, City of Appleton, Outagamie County,
2 Wisconsin. Two elements: Defendant caused the death
3 of Joshua Richards; second element, that he acted
4 with the intent to kill Joshua Richards.

5 Judge has read to you what does intent mean.
6 Intent means the defendant had the mental purpose to
7 take the life of another human being or was aware
8 that his conduct was practically certain to cause the
9 death of another human being. It's first defined --
10 there is no requirement that the intent exist for any
11 particular length of time before the act is
12 committed. It's not something, and the State has not
13 alleged in this case, that there was any preplan,
14 preplanning, med -- time period before. The act need
15 not be brooded over, considered or reflected upon for
16 a week, a day, an hour or even a minute. The intent
17 to kill may be formed at any time before the act,
18 including the instant before the act occurs. It must
19 continue at the time of the act.

20 So the State is going to argue to you the intent
21 is when he has that gun raised intentionally pointing
22 at Josh Richards' head and he pulls that trigger. It
23 may not be brooded over, thought about, planned or
24 considered for weeks or months. It happens at that
25 moment in this case.

1 The judge has also instructed you that in this
2 case there is also a lesser included instruction that
3 you're going to be given on the homicide charge, and
4 that is for the lesser included instruction of
5 first-degree reckless homicide.

6 So what you're to do is you're to first make
7 every reasonable effort between the group of you
8 that's selected to serve as our jurors to agree
9 unanimously on first-degree intentional homicide
10 first. You must make every effort to try to agree
11 unanimously on first-degree intentional before you
12 consider first-degree reckless.

13 If you get to that point of considering
14 first-degree reckless, the elements -- first element
15 is similar. Defendant caused the death of Joshua
16 Richards. Defendant caused the death by criminally
17 reckless conduct. The conduct created a risk of
18 death or great bodily harm. The risk of death or
19 great bodily harm was unreasonable and substantial.
20 The defendant was aware that his conduct created the
21 unreasonable and substantial risk of death or great
22 bodily harm and under circumstances which showed
23 utter disregard for human life.

24 One of those terms I think you can get on your
25 own, utter disregard for human life, but the judge

1 has instructed you you can consider what he was
2 doing, how dangerous the conduct was, how obvious the
3 danger was, why he engaged in the conduct, whether
4 the conduct showed any regard for human life, and all
5 other facts and circumstances around reckless --
6 showing utter disregard.

7 There is an additional question you have to
8 answer on the homicide charge that will be on the
9 verdict form that's presented to you, and that is,
10 did this defendant commit the offense while using a
11 dangerous weapon. And you'll see that on the verdict
12 form that's presented to you.

13 Second count in this case, possession of a
14 firearm by a felon. Again, December 8th, 2013, City
15 of Appleton, Outagamie County, Wisconsin, did the
16 defendant possess a firearm.

17 The parties have agreed that the defendant was
18 convicted of a felony before December 8th, 2013, and
19 you must accept this as conclusively proven. So you
20 really just have to decide if you believe he had a
21 firearm on December 8th, 2013.

22 The last four counts are all similar, and we're
23 going to kind of describe them. It is party to the
24 crime of intimidation of a witness. Time period,
25 December 12th, 2013, through February 12th, 2014.

1 Count 1, Paul Lee, Count 2 -- I'm sorry. Count 4,
2 Paul Lee -- we'll start over. Count 3, Paul Lee;
3 Count 4, Joe Thor; Count 5, Melanie Thao; Count 6,
4 Stephanie Thao.

5 Party to the crime. It is committed by someone
6 who directly commits the offense or someone who aids
7 or abets the person who does. That's kind of a weird
8 word. Aids or abets means that you assist the person
9 who commits the crime or are ready and willing to
10 assist the person and the person who commits a crime
11 knows of your willingness to assist. So that's party
12 to the crime. He either directly committed it or
13 with another assisted in committing the crime.

14 Intimidation of a witness. Each person in this
15 was a witness, a person who is expected to be called
16 to testify. The defendant attempted to prevent or
17 dissuade the person from attending or giving
18 testimony at a proceeding authorized by law. A
19 preliminary hearing is a proceeding authorized by
20 law.

21 That this defendant acted knowingly and
22 maliciously.

23 The defendant -- you'll also be asked to
24 consider and answer did the defendant commit the act
25 in connection with a proceeding in a felony case in

1 which he was charged; so, in essence, the theory that
2 he's encouraging them or to prevent or dissuade them
3 from coming, was that tied to a hearing related to
4 the homicide, to the felony in which he was charged.

5 At the conclusion of the case, I will ask you to
6 return a guilty verdict for each of those crimes
7 we've discussed.

8 The court has read to you an instruction called
9 burden of proof. You'll hear and you have heard from
10 the start of the case the burden is on the State to
11 prove to you every element in this case beyond a
12 reasonable doubt. What's reasonable doubt? Judge
13 has given you instructions on that, but it is a doubt
14 for which you can give a reason. It is not a
15 situation where you have to search for doubt. Judge
16 has told you in this case you are to search for the
17 truth. You're not asked to guess or speculate on
18 remote possibilities, you are to use your common
19 sense and life experiences.

20 Many things, Miss Wendy, I don't know her last
21 name so I would call her Miss Wendy, has probably
22 instructed you throughout this week, probably told
23 you can't bring in your phones in the courtroom, just
24 so they're not a distraction, but we never tell you
25 to leave your common sense or your life experiences

1 at the door. Those you bring with you when you weigh
2 and decide this case.

3 The State is confident that the evidence and
4 testimony we have presented to you will show beyond a
5 reasonable doubt the defendant is guilty of each of
6 the crimes charged, and by each of the crimes charged
7 I mean the first-degree intentional homicide charge
8 as well as the possession of firearm and the four
9 counts of intimidation of a witness.

10 I typically like to tell a story in a sequence,
11 and in this case I'm going to ask you to bear with me
12 because before we talk about the night of the
13 homicide, I think it's easier and faster to talk
14 about those intimidation charges and the jail phone
15 calls and the letters that we heard about those
16 intimidation charges.

17 So I want to first talk about what -- Counts 3
18 and 4 which are the counts that relate to Joe Thor
19 and Paul Lee. I think I actually typed those in
20 reverse. But there is a jail phone call. December
21 28th. Teng: Fuck. All right. Dumb but -- oh, man.
22 I don't inaudible those people were fucking thinking.
23 Chong: It's not your brother so I am not worried.
24 Your brother knows his part. Remember you heard
25 Teng's brother is Phong Lee. Teng: Well, I know

1 that, yeah. I know that. But the other two, they're
2 like starting fuck and shit. For real, man. Chong
3 Lee's response on December 28th, tell them to
4 disappear.

5 January 7th, 2014. Teng: Did you go to your
6 court hearing already. Chong: I got my preliminary
7 hearing on 8:30 in the morning on February 10th.
8 Chong: If Joe and Paul come then I am dead. Hey,
9 um, you, Phong don't have it. They did not give
10 Phong a inaudible to come. Teng: No. Phong didn't
11 get a subpoena. Chong: Oh, because I received my
12 papers and they said the witness is Phong. Teng:
13 No. Fuck that. I will tell Phong not to come.
14 Chong: Phong, Paul and Joe. If the three of them do
15 not come, then I get out.

16 Continuing on. Teng: I won't let Phong come.
17 If Phong comes I will take Phong, and then it's
18 inaudible. Chong: As long as Paul, Joe and your
19 brother do not come to say that I did this, and then
20 I don't care, you know. Later in the call Teng
21 responds or replied, that's hard. Chong: But then
22 since they are using the witnesses as Paul and Phong
23 and Joe as witnesses then they are going to fuck me
24 up.

25 Finally a call placed January 18th. Comments by

1 Chong. Because the only way I can win is if they --
2 if they say something different. You know. Tell
3 them to say something different and tell him that
4 when he -- he -- you tell him that when he talked to
5 them he -- he was telling lies, lies because he
6 doesn't know the truth. Chong: Do you hear that.
7 So you have to tell Joe not to say anything. Don't
8 say anything. Don't say anything about me and that
9 he was just lying. 'Cause he -- you tell him to say
10 that he was scared and he was scared about the, um,
11 about going to court.

12 We then have the series of phone calls that deal
13 with Melanie and Stephanie. Call January 28th, 2014.
14 Stephanie: Yeah. But then Melanie said that she was
15 really scared. Like she didn't want to say anything
16 but they kept asking so she had to say it. Chong:
17 No. She did not have to say it. She got scared and
18 just said it. Stephanie: Yeah. She got scared and
19 said it. Chong: She's stupid. How come she's not
20 strong like you.

21 Later in that call. Maybe they will try to
22 bring you guys to court. Stephanie: They're going
23 to try to bring us to court. Chong: Yeah. Make you
24 guys witnesses against me. Stephanie: Oh, yeah. To
25 testify against you. Chong: I said they will use

1 Melanie and Stephanie against me. They will use
2 Melanie against you. Stephanie: Yes. And you. I'm
3 sorry, Chong says, yes, and you. Stephanie: And me.
4 Chong: Yes, and you. Chong: Yes. I'm pretty sure
5 he will take you guys to testify against me in court.

6 After that call we then have calls between Chong
7 and Teng. January 29th. Melanie and Stephanie had
8 told the police that I was the one who did it. That
9 I was the one who told them that I did those things.
10 Teng: What. For real. Chong: Yes. For real.
11 Teng: Hey, but did they use those two crazies on
12 your case. Chong: Yes. Teng: They are going to
13 use Melanie and Stephanie too. Chong: Yes. Teng:
14 Fuck. Chong: They will bring along those two.

15 Later in the call. Teng: Damn. And Stephanie
16 just told you this yesterday. Chong: Yes. That's
17 why I tried to call you back last night. Teng:
18 Damn, man. What the fuck. Why don't they -- why
19 don't they -- why don't them two just fucking,
20 fucking don't even show up either. Chong: I know.
21 You have to tell them. Teng, later in the call, what
22 the fuck, man. And now I got to track those fucking
23 two down too. Chong is inaudible. Teng says, damn,
24 man, I'm tired of tracking mother fuckers down. Man,
25 shit.

1 And a call a few days later on February 2nd.

2 Can you move it over, Alex? Teng: When are your

3 courts again. Chong: The 12th at 8:30. Teng: The

4 12th of this month. Yes. Coming up, says Chong.

5 Teng: Okay. Okay. Chong: They will pull Melanie,

6 Stephanie, Joe and Paul, all of them to come. They

7 what. They will call Melanie, Stephanie, Joe and

8 Paul. All of them to come. Teng: No way. They

9 can't. Chong: Yes, they are. Teng: I already

10 talked to Mel and Steph, and they said no. They

11 weren't going to come. Chong: Yeah. Teng: Yeah.

12 Chong then says - can you move it up, Alex -

13 whatever, are you serious. Teng is inaudible.

14 Chong: What did they say to you. Teng: They said

15 they're just not going to come and tell the cops they

16 don't want to be involved.

17 So, again, trying to shorten that and explain to

18 you the calls you heard and the portions you heard

19 that relate to the charges of intimidation for Joe,

20 Paul, Stephanie and Melanie.

21 I want to now take you back and talk about that

22 Saturday night, Saturday, December 7th into the early

23 morning hours of Sunday, December 8th, 2013. As you

24 heard from many witnesses, this was a normal night

25 out in the City of Appleton. People were out, I

1 think we heard maybe a reference to a birthday party,
2 we had a bus of people that came down from Green Bay
3 to go out. People were at Luna Lounge, people were
4 having a good time. It was just another Saturday
5 night. Different groups of people, some didn't know
6 each other, all out.

7 It was just another Saturday night, the State
8 believes, until the evidence and testimony has shown
9 you that there began a series of intentional acts and
10 choices by this defendant that resulted in the death
11 of Joshua Richards. Intentionally having a loaded
12 firearm on his person. Intentionally walking to an
13 area where his brother Paul was standing and Phong
14 potentially arguing with Josh Richards.
15 Intentionally taking that firearm out, raising his
16 hand, holding out his arm intentionally,
17 intentionally aiming that gun at the left side of
18 Josh's face. Intentionally putting that gun a
19 fraction of inches to inches away from the left
20 temple, left ear of Josh. Intentionally pulling that
21 trigger, sending that .25 caliber bullet into Josh's
22 head, intentionally then turning and running away.
23 Intentionally running back to Sharks pool hall.
24 Intentionally dumping bullets from the gun into the
25 toilet. Intentionally continuing to run.

1 Intentionally heading to Milwaukee that same morning.

2 6:43 a.m. he's checking into the Milwaukee Hilton.

3 As you heard from Joshua's friends and people
4 who were with him on the bus, when they were out,
5 there wasn't any issues.

6 Brittany came in -- and I think you can see she
7 still is emotional about this. She reports being out
8 that night, they went to a couple different bars,
9 there weren't any issues, there weren't any problems.
10 She talked about Josh. He wasn't drinking a lot that
11 night. We know Josh was six foot tall, he was a
12 diesel mechanic. We know there really wasn't any
13 issues that night until about the last 60 seconds of
14 Josh's life.

15 We heard from Brittany it was getting to be
16 closing time. You saw from that second camera angle
17 that shows you into the bar Josh walking in front of
18 Brittany, at one point kind of pausing, waiting for
19 her to catch up, and then they walk into that front
20 foyer area.

21 We know from testimony in that foyer was Phong
22 Lee, Paul Lee, ultimately Tom Lee, Joe Thor. We know
23 that words are exchanged, I think multiple people
24 describe that, between Josh and Phong or Paul or any
25 combination.

1 But we know from testimony those words weren't
2 so significant that Dan Kersten, who was sober
3 working at that front door, didn't go over there,
4 didn't go to see what was going on. It wasn't so
5 significant and caught his attention at all, and
6 that's his job, to stand by that door and watch and
7 see what's going on.

8 We know from Mike Verheyden, he was going to go
9 out and get a cigarette. He's standing, I think when
10 you saw that camera in the bar, finishing his beer.
11 He sets down his beer. And then Mike described to
12 you, as you saw, he walks into that foyer area. We
13 know from Mike he saw Josh and this group of people.
14 He recognized Josh from being on the bus with him
15 that night, just kind of stood by to make sure
16 nothing happened, what was going on, check on things.
17 And Mike told you at a point it seemed like things
18 weren't escalating anymore, it seemed like people
19 were splitting up, so he turns to go get his
20 cigarette -- to go outside and have a cigarette, and
21 then he hears pop or boom. He hears a noise and
22 turns and he sees Josh is now down on the ground.

23 We also heard and you heard from Tou Shoua Lee
24 who came into that area kind of like Mike. He knew
25 some of the other people, checking out, seeing what's

1 going on, maybe going to break things up, it's end of
2 bar time. And I'll talk about Tou Shoua in a minute,
3 but you also heard from him it was Chong coming into
4 this area, raising his hands as if it looked like he
5 was going to punch Josh in the head, and then boom
6 and Josh is down.

7 We had shown you through the video that the time
8 period from when Chong leaves camera angle to when
9 he's in the foyer to when Dan Kersten and the others
10 react, thirteen seconds in time. And in that
11 thirteen seconds, in a split second, we believe the
12 evidence and testimony has shown you, for no good
13 reason, without any warning at all, the life of
14 Joshua Richards was forever changed by that man,
15 Chong Lee.

16 We know from officers some of them were very
17 close by. There is this College Avenue foot patrol.
18 So you have Officer VanderWielen, Lieutenant Peters,
19 Cary Meyer, others start responding to that scene.
20 Some were very close, just kind of across over by
21 Sal's Pizza. They get there. And as Lieutenant
22 Peters described to you, as he goes to Josh to see
23 what's going on, he's literally passing away in front
24 of his eyes because they had gotten there so quick,
25 but his injury and that shot to his head was so

1 severe.

2 You ultimately learn that officers also locate a
3 .25 caliber shell casing on the stairs by this
4 landing area. I'll talk about the markings on that
5 shell casing, but at the time they collect it, .25
6 caliber, there is writing FC 25 on it.

7 Officers start to talk to people. They talk to
8 Dan Kersten. Dan Kersten describes for them what he
9 had seen, how he wasn't really alerted to anything.
10 He described to the officers and to you how he had
11 walked past this area at some point when people were
12 there, nothing of concern. He talks about and
13 describes seeing a person run out, not the shooter,
14 he did not see the shooting, but a person who ran out
15 that had been in that area had a white vest on. We
16 know that's Phong Lee. But Dan Kersten never tells
17 you that was the shooter or that was someone who was
18 by the shooter, he tells you it was someone he saw in
19 that area.

20 Dan Kersten told you he's got past military
21 experience. Went up, checked on Josh, could see left
22 temple entrance wound, could see blood, looked, no
23 exit wound. Dan tries to start giving aid, along
24 with some others, and then the officers arrive.

25 Officers ultimately met and spoke with Brittany

1 who, from the video, you see literally ran out after
2 the fight after Alyson who was walking directly
3 behind Chong. Brittany is upset, emotional, shocked,
4 I think was the word she used, and I don't think you,
5 applying your common sense and your life experiences,
6 would really expect anything different. She had just
7 seen Josh shot right in front of her without any
8 warning, no fights, didn't know these people. I
9 think we even played a portion of the video where you
10 see her almost like pushing her way back into the bar
11 because she wants to get back in and be by Josh. She
12 remembers, as she told you, going down and kneeling
13 by him.

14 We also saw, and I think I talked about it as
15 this mass exodus of people, this reaction from Dan
16 Kersten and Adam Richardson and the girls, they turn
17 and then you see people come out. And I think
18 through the testimony and the video we kind of
19 identify that series of people. Video shows that Joe
20 Thor is out the door, Paul Lee's behind him, then
21 Phong Lee. You see the two girls who are standing by
22 Adam kind of get pushed out in the swell of people.
23 Dalinda Guzman is in this area at that time. We saw
24 the next sequence of people, Tom Lee, Chong Lee
25 behind him, then Alyson, and following Alyson,

1 Brittany trying to reach out and grab, and as you see
2 them exit, start to reach and grab to tackle Alyson.
3 We then see other people who also leave and exit that
4 scene immediately after the shot.

5 We learn from Alyson that she had been out that
6 night with her friend Dalinda, others. She lives in
7 Milwaukee now but was from Appleton. They met at
8 City Limits, Phong, Paul, Chong, Joe, others, I think
9 there was a gentleman named Xung there also that was
10 also mentioned. Alyson describes them being at City
11 Limits, being at Sharks, then being at Luna. Nothing
12 concerning to her. Nothing she was worried about as
13 the night went on. Alyson tells you, and she was
14 helpful in drawing and identifying many of the names
15 on the boards of the people and her friends who were
16 out with her that night, but she describes a time
17 when it's getting to be bar closing and walking out,
18 Chong is in front of her, Dalinda is in front of her,
19 and she then, as she's kind of standing in that
20 entranceway now off camera, but she sees a bright
21 flash in front of her. Unexpected. Shocked her.
22 She told you as she was walking to that area, walking
23 as Chong is walking to that area, she can see Paul in
24 that foyer because he's got this black and white
25 patterned coat which you've seen. Weird black

1 lighting in that area. And she can see that it's
2 Paul. She thought maybe there was something going on
3 or a fight. She wasn't paying complete attention.
4 But as she approaches, that's when she sees that
5 flash and she turns and runs because she's scared.

6 We heard about the girl fight. I don't know
7 what other way to call it. But we heard about the
8 fight that occurred immediately outside of Luna where
9 Brittany runs out after, grabs and tackles Alyson,
10 starts hitting her, yelling at her.

11 And then you met a different group of people,
12 Johnny Thao, Jared Randall and Jonathan Nielsen,
13 people who were just, again, out downtown who
14 happened to be outside at this time of the night, and
15 they see -- one of them described this swell of
16 people. I think one of them said they thought they
17 saw a bunch of Asians run out and then there is these
18 two girls fighting. Not normal, I think one of them
19 described, for a Saturday night on College Avenue.
20 They don't know them. So remember we talked about a
21 blonde haired girl or a brown haired girl, brown
22 would be Brittany, blonde is Alyson, but the girl
23 who's more of the aggressor, the one in a rage, I
24 think one of them said, is Brittany. Hitting Alyson.
25 Brittany I don't think remembers exactly what she

1 said. I think that's what she testified to you
2 about. But the guys heard it, and they heard her
3 yelling and screaming while she's hitting her, your
4 boyfriend shot my boyfriend. Your boyfriend shot my
5 friend is what John Nielsen thought he remembers.
6 Johnny thought it was your friend shot my friend.
7 But clearly comments immediately after this incident
8 from Brittany to Alyson.

9 We also know in that area, in approaching and
10 walking up to that area were Alyson and Chong just
11 prior to the time of the shooting in the thirteen
12 seconds before the time of the shooting. The
13 gentleman who watched this fight described how they
14 separated the girls, tried to get them calmed down.
15 I think Jonathan Nielsen described even at one point
16 seeing an Asian male, and I remember he used the word
17 haphazardly, little unique of a word, he said there
18 was an Asian male and tried to haphazardly split up
19 the girls or do something. You know from hearing
20 testimony of Tou Shoua that was him. He told you how
21 after he ran out of Luna he saw Alyson, went by her
22 for a little bit but then left. But you also heard
23 after the girls get up, Johnny Thao and I think Jared
24 described Alyson being pretty beat up, maybe a broken
25 nose, bloody face, and Johnny remembers them asking

1 her, you know, what was that about, what happened,
2 and her response that Johnny remembers is my friend
3 shot that guy at a point where Alyson had just been
4 beaten up, struck several times, at a point in time
5 the State would argue before she can probably really
6 think about what she's going to just off the cuff say
7 to this person, before a point in time when she hears
8 she has later when she's scared and doesn't really
9 want to know who's involved. And I think Johnny even
10 said she made a comment that her friend who shot the
11 guy was Asian.

12 We know the officers encountered what can best
13 be described as a chaotic scene. Bar close, people
14 have been drinking all night. Because that front
15 door is the only in and out, no one else can really
16 leave once officers get there. They start trying to
17 identify people who are not happy they have to stay,
18 want to go home, have been drinking. I think one of
19 the witnesses testified Luna didn't continue to serve
20 alcohol when they were there. So you have a group of
21 people who want to go home.

22 Officer VanderWielen, Lieutenant Peters
23 described getting there and that bar being loud, that
24 foyer area being dark and being chaotic.

25 We know from testimony of officers the people

1 who had been in the immediate area, but for a few,
2 Brittany and Mike, left. There is little physical
3 evidence at the scene.

4 And then as Sergeant Rabas described to you this
5 week, they had also had and learned quickly that
6 there was this bus full of people, two buses, one had
7 left but there was a second bus of people from Green
8 Bay, so now try to go to that bus and say we need you
9 to stay for a minute, we got to sort this out.

10 We learned from Sergeant Rabas he met a
11 gentleman named James Phimmachack, and probably in
12 today's era, cell phones, everybody has them, most
13 people have them. They're out all the time. Very
14 probably infrequently that people go out to the bars
15 without their own cell phones or without a cell phone
16 if they have one. But James, he comes in and sees
17 what happens, he recognized Josh and decides I'm
18 going to start recording this because he doesn't know
19 if it's going to be helpful later, he doesn't know if
20 it's going to show something that might be important
21 to show, but he does that. I'm not going to play
22 that cell phone video again for you, but I think you
23 recall the first Friday of the trial you saw that
24 cell phone. You could see that video, how dark it
25 was, how loud that music was. You can hear and make

1 out what song was even playing. How chaotic it was.
2 People are trying to -- should we roll him, and
3 another voice screams out don't touch him. People
4 are trying to figure out what happened, is he hurt,
5 what's going on.

6 We heard evidence and testimony then from people
7 who left the scene. And officers ultimately, through
8 this white board, they get the video and they, in
9 essence what Exhibit 32 is, they take still images of
10 people. Sergeant Rabas described how he was able to
11 watch people enter and exit that night and come up
12 with different still images of when they first came
13 into the bar, other times when they might have left
14 to go out, assuming they were having a cigarette,
15 came back in, but they take those still images and
16 the Appleton Police Department starts to work on
17 identifying those people, who are they, what are
18 their names.

19 Ultimately that leads them to talk to Phong Lee
20 who Sergeant Schira described to you, I think it was
21 nine times he asked was he there, and no, no, and
22 ultimately they have to confront these people. We
23 have photographs of you at Luna, okay, so let's talk
24 about you being there. And we heard from Phong in
25 that first interview, he doesn't want to be a snitch,

1 he doesn't want to talk about what happened or what
2 he knew or what he saw.

3 He talked to Joe Thor on December 9th. He
4 doesn't also really want to talk about what happened.
5 First, are you at Luna. Again, no, I'm not there. I
6 think you see a pattern of people who don't want to
7 be involved, don't want to snitch, don't want to be a
8 snitch, don't want to talk about what they know. But
9 over time they start to. Ultimately Joe Thor
10 disclosed to the officers, and it kind of tells the
11 story of the rest of where did this defendant go
12 after he had intentionally put a round into Josh's
13 head.

14 We know from Talisa and Marissa they were at
15 Sharks around bar close. I'm going to get it wrong.
16 One of them is not of legal drinking age so she was
17 not drinking, but it's a pool hall so you only need
18 to be 18 years old to go there. And that woman
19 remembers seeing the defendant come in. One of them
20 remembers him going back by the bathroom area for
21 ten, fifteen minutes. They weren't exactly watching
22 him but remember him being in that area of the
23 bathroom, talking to him at one point, comes up to
24 them and said can I get a ride to my mom's house, he
25 needs a ride. And Talisa and Marissa tell you

1 ultimately they're able to leave. There had been
2 some kind of announcement even at Sharks that
3 something was going on down by Luna, there had been a
4 shooting, but they leave and they take this gentleman
5 who they identify to you as the defendant to a house.
6 And I think it's fair to say neither of them knew
7 which house or where they were going. He directed
8 them. And they took him to a house you ultimately
9 learned through Officer Nagel that is on the 1700
10 block of North Harriman.

11 The girls describe they drop him off and then
12 they remember seeing him standing outside, which they
13 thought was odd because if it's his mom's house, they
14 thought that was odd, but he didn't go in the house
15 right away, so they see him standing outside for a
16 bit and then they just leave. They don't want to
17 stay anymore.

18 You learn when he -- those two ladies come in
19 and talk to Officer Nagel, he doesn't know where Joe
20 Thor's house is, and I think it was probably like a
21 cat and mouse game trying to figure out what house in
22 Appleton did they go to. So ultimately Talisa and
23 Marissa are in a car, Officer Nagel is in a separate
24 car following them, and they -- the girls drive
25 around and ultimately they get to that house 1739, I

1 believe it is, North Harriman Street, and they say
2 that's the house where we dropped him off.

3 You learned as the case went on Joe Thor lives
4 at 1745 North Harriman Street. You learned from Paul
5 Lee, Joe Thor and Phong that a short time after the
6 shooting, they don't know how he got there, but Chong
7 ends up at Joe's house. They're down in the
8 basement, which is Joe's room, and while there, Chong
9 makes statements. I fucked up and I shot the guy or
10 I popped the guy. But a statement about him being
11 the shooter.

12 You know a few hours after that Joe and Chong
13 are in a car heading to Milwaukee because the video
14 and the photos we showed you have Chong now in a
15 blue, shades of blue maybe, white plaidish pattern on
16 his jacket checking into the Hilton at 6:43 a.m. We
17 ultimately know Joe disclosed to the officers that at
18 some point Chong had told him he flushed some things
19 or flushed the gun at a downtown bar.

20 We met a group of people then from Milwaukee.
21 Xai Thao, Peter Moua, Joseph Vang, and Kong Vang, who
22 goes by Jesus, which is an easy way to keep Joseph
23 and Jesus separate, but you hear from those people
24 that Sunday they were at maybe Phonesay's house, this
25 man they call Q. I think they were watching football

1 or watching games. Chong's there. Joe Thor is
2 there. Some of them know those people from living up
3 here. Xai Thao really doesn't. He's dating Dia who
4 is Peter's sister. But while they are outside, Xai
5 kind of describes, you can't smoke at Q's house, you
6 got to go outside to smoke, and while out there the
7 defendant says to him that he shot a guy. Xai says
8 when the defendant says this he seems scared.

9 Peter Moua tells you that when Chong was down
10 there the defendant makes a comment I shot a guy. I
11 got him.

12 Jesus tells us that the defendant makes a
13 comment to him about shooting a guy and that he seems
14 scared when he made the comment.

15 We learn from the checkout time at Hilton and
16 also from this unique restaurant down in Milwaukee,
17 JJ's Chicken & Fish, that the next day, that morning,
18 Chong and Joe check out of the Hilton, stop at JJ's
19 and come back up to Appleton.

20 We know over the next several days Chong
21 continues to talk to people about what he did, goes
22 out to eat with Stephanie and Melanie Thao. First
23 they're eating at a sushi restaurant and that night
24 Chong tells them that he did the shooting. I think
25 Melanie said the seating was Chong, Stephanie in the

1 middle, and then Melanie. She's described being
2 pretty surprised when he said that. Stephanie
3 describes that same disclosure by this defendant,
4 tells him he did the shooting.

5 The next day, Tuesday, there must be some
6 connection to Tuesday and Buffalo Wild Wings with
7 these people, but Tuesday they go to Buffalo Wild
8 Wings, and while they're there Chong tells them
9 again, and I think Stephanie even described further
10 comments made by Chong. Melanie described Chong
11 saying that he broke apart the gun, threw it in a
12 lake. I think to one of the girls he talks about
13 Paul being in a fight and being cornered and then he
14 shot the guy.

15 We heard from the first interview officers had
16 with Phong he doesn't want to talk about it. When
17 the officers are pressing him on Joe and Paul, he
18 says, I'm going to tell you, they're not the ones
19 that did it. He ultimately discloses that it was
20 Chong who told them he popped a guy after he came
21 back to Joe's house.

22 You'll learn that officers -- on December 11th
23 some officers head to Milwaukee because by now you've
24 heard, I think, other than Talisa and Marissa, the
25 one other person I think we've had who called in to

1 share some information was Dalinda Guzman who after
2 left the scene but calls officers. That leads
3 officers to Alyson Blom. They go down to talk to
4 Alyson who is working down at the mall in Milwaukee,
5 I think it was the Mayfair Mall even, and on the
6 night of December 11th they talk to Alyson. You'll
7 learn those officers were told by Alyson that she had
8 a conversation with Lisa prior to where Lisa shared
9 her opinion, Lisa Stutzman, this would be the
10 sister-in-law of the defendant, that Chong was the
11 shooter.

12 You'll learn those detectives, Sergeant Meyer
13 and Sergeant Tauber, call back and have a
14 conversation with the officers at the Appleton Police
15 Department about what they had learned.

16 And you'll learn in the time line of things
17 around the same time they're talking to Alyson is
18 when Sergeants Rabas and Schira are over at Norka
19 because they had observed this object in Paul's hand
20 that they thought was a gun. Something reflected.
21 And you've seen the Luna images, how color doesn't
22 mean really anything, how different fabrics show up
23 different ways depending upon the light. But the
24 officers see an object and they want to talk to Paul.
25 They know up to that point that Paul had at least

1 been in some kind of verbal or physical altercation
2 based upon what had been described. You'll learn
3 that Paul, and I think you heard and saw some of
4 that, was very adamant throughout. I am not the
5 shooter. I did not do this. Was it Joe? No. Joe
6 is not the shooter. Was it Phong? No. Phong is not
7 the shooter. And I think he's asked several times,
8 who was it then. Paul tells them probably one of the
9 -- I don't want to say one of the few people, but one
10 of the people who said when we want to talk to you
11 about Luna he says he was there. He describes being
12 in a fight or an argument. He ultimately describes
13 coming up from the bathroom with Phong. Phong and
14 Josh, they ultimately know theirs name, and Paul,
15 they have words with Josh.

16 Several times during that interview at Norka
17 Paul was asked if he's the shooter. Always says no.
18 Gets angry, gets upset with them. I think testimony
19 was that at one point he said, you think I'm the
20 shooter? He brought that up. Through that testimony
21 and interview there is one comment Paul makes at one
22 point when he's not identifying the shooter but he
23 tells the officers, I didn't stay with the shooter.
24 And that, the State would argue, is important for you
25 to know because when he runs out he runs to the

1 right, Joe is in front of him, Phong is behind him,
2 and they head up North Division Street. We know
3 Chong Lee exits that door and heads to the left. We
4 know that when Paul is at the Appleton Police
5 Department Sergeant Schira now goes in to talk to
6 him, and this is at a point when they've learned what
7 was shared from Milwaukee, a point where I think
8 Sergeant Schira described literally like walking to
9 the interview and being told by Lieutenant Gostisha,
10 we have this other information about Chong. And that
11 going into that they ask him again, what is this
12 thing in your hand. And we learn from the detectives
13 at Norka he said a few times, I didn't have anything
14 in my hand. If I did, my e-cigarette or a bottle,
15 not a gun.

16 We learned when they talked to Paul there, they
17 ask him, okay, let's talk about who was with you. He
18 talks about different people. Doesn't say Chong was
19 with him. And you learn from Sergeant Thao at one
20 point he says, what about your brother Chong, because
21 they know based upon the photos Chong was there. And
22 I think Sergeant Thao described at that point after
23 bringing up Chong's name Paul's demeanor changes, and
24 ultimately he gets emotional, and he says in Hmong,
25 my brother's going to hate me for this. I think the

1 transcript in a portion he plays, because I think
2 Sergeant Rabas or Sergeant Schira remembers hearing
3 it as that same comment. My brother is going to hate
4 me for this. And he tells him not that he saw Chong
5 do the shooting but that after the fact -- first he
6 tells them on Monday when Chong came to his house
7 Chong talked about doing the shooting. Ultimately
8 also talks about being at Joe's house that next
9 morning and Chong coming there and saying he did the
10 shooting, he popped the guy, or I fucked up, I shot
11 the guy. I think another part of Paul's interviews
12 that are interesting is it was brought out when they
13 stop and Joe's getting rid of his hat, Phong is
14 taking off his vest, he kind of says, what are you
15 doing. Paul doesn't get rid of anything.

16 The other thing that I think is interesting to
17 note is when they first spoke to Paul at Norka, he's
18 like, let's see the video, I want to see that video.
19 And I asked him, did you think the video was going to
20 have anything on it that would be hurtful to you. He
21 said no. Anything hurtful to Joe. No. Phong. No.
22 Your brother Chong. His answer was I don't know. We
23 know there is no video of this specific moment in
24 time when Joshua Richards was intentionally shot.

25 You'll hear over that time then officers go and

1 make contact with Chong. He's brought to the
2 Appleton Police Department as well, and you'll -- you
3 heard about that conversation. It was Sergeant Meyer
4 and Sergeant Schira. You'll learn or you did learn
5 that at that point in time Paul was at the police
6 department. Paul had no access to phones during the
7 time he's there. Paul doesn't know Chong's brought
8 in at this point. And officers talk to the
9 defendant. And we played that portion for you.
10 Talks about I was gone by that time. I left at 1:40.
11 Then it's, I was outside with three girls but I don't
12 know their names. Then it was, I was almost out the
13 door at the time of the shot.

14 I'm going to ask you to use your common sense
15 and your life experiences when you examine and watch
16 that video. At times the defendant was seen
17 laughing. He's yawning during the time they're
18 talking to him about someone being shot and them
19 confronting him about he being the person that did
20 that. A killer is a killer. Murder is murder.

21 You'll learn on December 12th officers continued
22 to follow up. At 1:00 Sergeant Rabas is at Joe
23 Thor's door and starts talking to Joe Thor. Paul's
24 still at the PD. He doesn't get home until 1:17 that
25 afternoon. We know Sergeant Tauber had gone to try

1 to talk to Phong at eleven that day. Phong was
2 working but says I'll meet you when I'm done at 2:00.

3 So the officers talk to Joe Thor starting at
4 one. Joe then describes Chong, the gray sleeve. I
5 think that moment in time, based upon how Joe
6 described it and how the officers describe it, is
7 pretty much frozen in Joe's mind, seeing Josh's head
8 and seeing that bullet or reaction to the head of
9 Josh when he's shot. You heard him describe and
10 ultimately tell Sergeant Rabas at that point that
11 Chong talked about flushing the gun or stuff at a
12 downtown bar. Sergeant Rabas knows from that
13 interview Chong had done that morning Chong describes
14 leaving and going to Sharks, so he asks, is it
15 Sharks, could it be Sharks. And what you know is
16 layered on top of those interviews with Joe and with
17 Phong that started at 2:09.

18 Additional group of officers go out to Sharks
19 that afternoon. They learned from the owner that the
20 night before on the 11th they had found four bullets
21 in the men's toilet in the bathroom. You learned
22 that on December 12th when some of the Appleton
23 officers went there they went with a plumber, he
24 takes the toilet off and two more bullets come out of
25 the toilet. And you learned that the casing at

1 Sharks, same marking, FC 25, casing or the bullets
2 all at Sharks, same marks on those. Mr. Peotter
3 yesterday called by the defense told you that they
4 checked from the pipe down, there is no gun. They
5 found a bunch of other junk but no gun. But he also
6 talked, when Attorney Maier asked him questions
7 about, you know, could bullets get flushed. He
8 talked about how heavy they are. I think his
9 description was you need a five-gallon pail or bucket
10 of water going down that toilet to get those out
11 through that -- those traps, those J tubes he
12 described. Or this high powered toilet, which he
13 knows from servicing Sharks, Sharks doesn't have.

14 We know that as the investigation continued
15 additional things happened. Dr. Kelley, the morning
16 of the 10th, does an autopsy on Josh Richards after
17 an organ harvest had been done. Dr. Kelly tells you
18 Josh basically died instantly at the scene. That
19 bullet entering his head, entering his brain,
20 fracturing his skull. He talked about the wound
21 path, left ear by the ear lobe entering Josh's head.
22 The wound path being upwards, left to right, slightly
23 front to back, and he talked about the soot or the
24 stippling from the end of the barrel, how hot things
25 come out, how sometimes gunpowder and other things

1 are immediately ejected, and based upon what he saw
2 in Josh, fraction of an inch to a few inches, near
3 contact to a few inches at the time of the shot.

4 We learned that after this December 12th
5 officers monitored jail calls, and you learned
6 probably more than you ever thought you would learn
7 about the Outagamie County Jail call system, but it's
8 a system in which inmates are assigned an ID number.
9 You can call using that number, or if someone, I
10 think Sergeant Thao describes, has money on their
11 phone, any inmate ID number can call a phone. And
12 you learn that in many of the calls that we used they
13 were placed by the defendant to Chong (sic) or to
14 Stephanie, to others, to Teng, to Hu, to Paul, but
15 most of those were not under his own inmate ID
16 number, and from that officers then on January 21st
17 executed a bunch of search warrants for letters, and
18 you heard and we read to you some of those letters.

19 But they also then talked to Stephanie and
20 Melanie and learned what the girls had been told by
21 this defendant, how Stephanie described, and I think
22 we -- she was asked several times when Chong said
23 this, you know, was he joking, and she said, what she
24 told the officers then, he was scared. Melanie
25 described how he broke down the gun, tossed it in the

1 lake. Stephanie explains she learned the other guy
2 was going to take a swing at Paul, Chong got mad, and
3 he shot him in the head, and it was a tall or really
4 tall person.

5 We played several calls for you, and I don't
6 want to read all of them back, but we had to do it in
7 a sequence based upon what witness we had, not based
8 upon the order that they occurred, so I feel like we
9 almost through the evidence and testimony gave you
10 several chapters of a book but you never knew when
11 you were getting Chapter 6 and then 2 and then 12,
12 and I want to go through some of the calls because I
13 think when you go through them in the order and the
14 sequence in which they occurred it tells a story.

15 We also found letters, and some of those
16 portions were read to you. A letter to his brother
17 Nhia found in the defendant's cell. On January 21st.
18 Joe and Paul supposed to recant. If they recant at
19 the prelims, then the case is going to be dropped.

20 A letter officers found at the home of Teng.
21 Damn, T. I been mad lately. I just can't believe
22 that my own blood could do this to me. The only
23 people -- I should start over. Um, Phong, Paul and
24 Joe be subpoenaed for it. Scheduled for 10:30
25 February 25th. The only people that will be allowed

1 to come is the witnesses, which is Paul, Joe and
2 Phong, along with the cops. For evidence they only
3 have the testimonys of Paul and Joe, no physical
4 evidence, so that means no prints, guns, et cetera.
5 I can't have Paul and Joe show up. If they do, I
6 would lose. Man, those two put me into a difficult
7 situation, bro. I really hate those two at the
8 moment.

9 I think, and the State would argue, the letters
10 the defendant never expected we'd find. Never
11 expected that these letters sent to Michael or the
12 letter that was about to go out to Nhia or to the
13 girls or to Teng would be found. And I think many of
14 the references in them are very telling.

15 We also look at the phone calls. First calls he
16 makes he wants his Facebook account taken down. Take
17 it down. Tries to give the pass code, one love this
18 life, many times. There is some confusion. I think
19 somebody says just say it in English.

20 Then there is calls starting on -- at 6:30,
21 December 12th, so the day he had first contact, the
22 day Paul had contact, Paul was brought to his house
23 at 1:17. So 6:23. Paul tells him, so then I said
24 you were there. Chong says, put money on the phone.
25 I will call back. And he later says to Paul, why did

1 you say -- say that to them. Call then occurred at
2 9:19:31, so 7:30. Chong says to Paul, as long as
3 when you tell them again that it was not me. Paul:
4 Huh. As long as you say it is not me, I don't care.
5 Paul then says, but they already got me. And then
6 they talk about Paul being on camera.

7 December 18th, call with Teng and Chong. And
8 Joe (sic) tells Teng, Joe's working for the police.
9 Teng's response is, for real. Chong says, yes. Joe
10 told me. Teng: What about Paul. Chong: Those two,
11 Paul and Joe. Teng: For real. Chong says, yes.

12 December 28th, 10 days later, 9:30 in the
13 morning. Teng and Chong talking. So how is your
14 case going, asked Teng. Chong: So I could, I should
15 win. Teng: You sure. Chong: Yes. I don't like --
16 they don't have anything on me. Teng: Okay, man.
17 So you denied it completely. Chong: Yes, I
18 completely denied it. But then if Joe, you know.
19 Teng: I'm not sure if it's Joe though. I'm thinking
20 it's Paul. Teng -- or Chong: No. It is Joe. Teng:
21 You sure. Chong: Yeah. Because Joe told -- Joe
22 told them that the bullets are here and other things.
23 You know. Teng: Joe said what. Chong: Joe said to
24 them -- told the police that inaudible, oh, the
25 bullets inaudible are here. They flushed the bullets

1 like this. Like this. Teng's response, oh, that's
2 bad.

3 And that's the call where I talked about
4 earlier, ultimately, as they continue to talk about
5 Joe and Paul, Chong says to Teng, tell them to
6 disappear.

7 A call on January 4th between Chong and
8 Stephanie. That gay jerk, he is so mean to me, he
9 and Paul. Stephanie: Yes. Chong: I told you they
10 didn't know anything. But you see. Stephanie:
11 Yeah. Chong: Like they didn't know anything and
12 then suddenly he and Paul said it was me. Then
13 kicked in the door. Chong says, and then I took
14 Teddy inaudible so far away. Stephanie: Really.
15 Chong: Yeah. I was like what the fuck. And then I
16 woke up and I was inaudible. Stephanie: Yeah. I
17 knew that someone was -- has to say that. Chong: I
18 figured that it was that white person, you know.
19 Stephanie: Oh, yeah. Chong: But it was them and it
20 turned out to be my two guys.

21 I think that's interesting when you examine all
22 the evidence and testimony because what white person
23 could Chong be worried about? Alyson, Mike
24 Verheyden, Brittany Olson?

25 January 7th, the call we played already where

1 they -- Teng says, or we've shown you, did you go to
2 your court hearing. I got my prelim hearing on 8:30
3 in the morning of February 12th. That's where Chong
4 says, if Joe and Paul come, then I am dead. Later in
5 that call Chong says, as long as Paul and Joe and
6 your brother did not come to say that I did this and
7 that, then I don't care, you know. Teng: That's
8 hard. Chong: But then since they are using
9 witnesses as Paul and Phong and Joe as witnesses,
10 then they are going to fuck me up. Teng: Have you
11 talked to Shoua. Chong: Huh. Teng: Have you
12 talked to Shoua. Chong: Man, I talk to him. He is
13 so gay.

14 And we learn ultimately the officers did talk to
15 Tou Shoua Lee and what he saw and what he described.

16 Then the calls in January continue with Chong
17 saying on January 18th, when you are with Joe, tell
18 Joe he needs to say something different. Tell him to
19 say something different. Chong again says, because
20 the only way I can win is if they -- if they say
21 something different, you know. That gets -- that
22 theme gets repeated that we played for you in that
23 call. Chong again, tell them to say something
24 different. You tell them that when he talked to him,
25 he -- he was telling lies, lies, because he doesn't

1 know the truth. Because he told me that he saw that
2 I did it. Chong: He did say that. He said he saw
3 me do it. He said I was wearing clothes that look
4 like this and that. He said he saw the black thing
5 in my hand. So did you hear that. Did you hear
6 that. You have to tell Joe not to say anything.

7 And then there is calls where Chong talks about
8 Paul. January 21st. When you see stupid Fatty tell
9 Fatty -- tell stupid Fatty that I need to talk to
10 him. I don't know how to talk to him. And he needs
11 to say I don't know. Yes. But if they lock him up
12 his max is only one year and nine months only.
13 Inaudible. But I don't know about Joe. Joe said
14 that too. Oh, because you know I have court in two
15 weeks.

16 Then we get to the point on January 25th when
17 Chong realizes Stephanie and Melanie have talked to
18 the police. We played part of those calls for you,
19 and we highlighted some of those.

20 Chong on January 28th is talking to Hu. Tells
21 Hu, the police talked to Melanie and Stephanie.
22 Melanie and Stephanie said that they knew what I said
23 to them. So tell the police that they knew I was the
24 one who did it. Hu says, they said that. Chong:
25 Yes. Hu: What the fuck. Chong: And they also

1 talked to Tou Shoua.

2 There is then the recording on January 29th
3 which we showed you earlier with Teng where Chong
4 says, Melanie and Stephanie told the police that I
5 was the one who did it, that I was the one who told
6 them that I did this thing. Teng: What, for real?
7 Yes. For real. That's when Teng talks about having
8 to track those two down and find them.

9 And then on December -- February 2nd, comment,
10 when are your courts again. We talk about the 12th
11 at 8:30. They will pull Melanie, Stephanie and Joe,
12 Paul, all of them to come. They will pull all of
13 them to come. Teng says, I already talked to Melanie
14 and Stephanie, they said no, they weren't going to
15 come. Chong: Yeah. Teng: Yeah. Chong: Whatever.
16 Are you serious. Because there is a previous call
17 where Chong says to Teng, talking about Melanie and
18 Stephanie, why don't them two just fucking -- fucking
19 don't even show up. That's Teng. Chong: I know.
20 You have to tell them.

21 As I told you at the start of this case, this
22 case is as much -- and we're going to focus as much
23 as what happened in that small thirteen-second
24 window, the last thirteen seconds of Josh's life, to
25 tell you who was responsible and who did this, but

1 what I think also tells you who is responsible and
2 who did this is what happens after. Those phone
3 calls. Going to Milwaukee. Hiding items.

4 I think the evidence and testimony has shown you
5 that when you examine all the evidence in this case,
6 and the witnesses, this case, evidence and testimony
7 showed you, was an intentional act by this defendant,
8 someone who is not involved in the fight, someone who
9 intentionally walked through Luna, seen his brother
10 involved in a fight, someone who then intentionally
11 removed that gun, intentionally raised the gun to the
12 victim's head, intentionally pulled the trigger on a
13 near contact shot.

14 At the end of this case I will ask you to return
15 a guilty verdict on all the charges in this case.
16 Thank you.

17 THE COURT: Thank you, Attorney Schneider.

18 And, Attorney Vishny, do you need a few moments
19 to get prepared?

20 ATTORNEY VISHNY: Yes.

21 THE COURT: Okay. Why don't we leave the
22 jury for about ten minutes and then we should be all
23 set to go with defense closing.

24 Please rise.

25 (The jury was escorted out of the

1 courtroom.)

2 (Court in recess.)

3 THE COURT: Please rise for the jury.

4 (The jury was escorted into the courtroom.)

5 THE COURT: Please be seated.

6 Attorney Vishny, whenever you are ready.

7 ATTORNEY VISHNY: Thank you, Your Honor.

8 We told you in the beginning they got the wrong
9 guy. We're going to talk about that. I'm going to
10 talk about it as I do this closing argument because
11 I'm going to talk about three things: How the
12 evidence shows that Chong Lee is not the shooter and
13 who the defense submits is the shooter; No. 2, the
14 police investigation methods and what the problem was
15 with them; and, No. 3, what the law is and what you
16 must follow as jurors.

17 So there's a really old philosophical saying,
18 and for those who have heard of things that are more
19 obscure, because I didn't hear about this until last
20 week, it's a 14th century philosopher came up with
21 this principle called Occam's razor, very obscure in
22 my mind, but basically what this principle says, and
23 it's still true today, is that if there are two
24 competing theories, the simple one is usually true.
25 So we might think of it as keep it simple, stupid.

1 Right? Not to say anybody is dumb, that's not the
2 point of this. I like to say, if it walks like a
3 duck, if it talks like a duck, it's a duck.

4 So what does the evidence show in this case.
5 And the first group of witnesses I'm going to talk
6 about are what I call the independent witnesses.
7 They're not friends with any of the people in the bar
8 and they don't have any pressure to solve a case on
9 them, but they are people who happen to be there and
10 see what happens, and what is it that they had to
11 say.

12 Adam Richardson. Adam Richardson testified in
13 the beginning of the trial, pretty early, and you may
14 remember that he is standing right by the door. He's
15 waiting for a ride with his friends. He is looking,
16 according to the testimony, straight at the direction
17 where the shooting is about to occur. He is looking
18 at that time for that second. He hears a pop. He
19 looks. What does he notice? A bunch of people
20 running out the door. A lot of people running out
21 the door. Said 10, 14, something like this. But he
22 focuses on one person. He focuses on the guy who is
23 the second person out the door. Why? Because that
24 man, he sees him doing something, putting something
25 in his coat pocket. He's concealing something. And

1 what does Adam say? It could be a gun. He doesn't
2 know for sure. It could be a gun, but it draws his
3 attention. And seconds later, when he goes out the
4 door, he sees this man and two others, that they've
5 gone to the right and that they are running
6 northbound on Division Street. Who was that man?
7 Paul Lee. Daniel Kersten also said in court that
8 Adam Richardson was looking at what happened.

9 Now what about Daniel Kersten? One of the best
10 witnesses we have because he's working there as a
11 bouncer. It's his job to look around and see if
12 there's trouble. He's not drinking any alcohol that
13 night, he's not a patron, not even half a beer. He's
14 got military training. He's observant. And so what
15 does he see at the time? He is watching, as he told
16 you, that there's some kind of dispute going on, and
17 he's keeping an eye on it but he doesn't see an
18 actual fight. So doesn't seem like there's a
19 problem. He turns away and then he turns around and
20 that is the time that the shooting is fixed at, at
21 1:50:25.

22 So let's watch that -- what happens and what
23 Daniel Kersten sees. Yeah. Very briefly. Only very
24 briefly with the lights down. We're going to play
25 this in real time.

1 ATTORNEY WEITZ: For the record we're
2 starting at 13:50:18.

3 (Video playing.)

4 ATTORNEY VISHNY: Kind of looking back.
5 Adam Richardson is looking towards the back, and you
6 can see -- stop. You can see what happened. Adam
7 Richardson is looking back to where it's happening,
8 Daniel Kersten looks, doesn't see much of a problem
9 going on.

10 We can turn the lights on. Thanks.

11 Remember. He's a bouncer. He's supposed to
12 break up fights. That's one of his jobs as a
13 bouncer. Things seem okay. He turns around. Boom.
14 They are both looking in the direction. So what does
15 Daniel Kersten notice? He notices a guy with a white
16 puffy vest. He sees the people who are around Joshua
17 Richards. He sees them run out and to the right.
18 One of them he notices has a white puffy vest. It
19 looks like that guy is trying to take his vest off.
20 Now we know ultimately Phong Lee does not take his
21 vest off until a little bit later when he dumps it in
22 the garbage can, but that's what he focuses on.

23 These are witnesses who have nothing to hide, no
24 reason not to give the best memory they have to the
25 police.

1 And Brittany Olson? Josh's girlfriend? Okay.
2 A lot has been said here. Your boyfriend shot my
3 boyfriend. The District Attorney was talking about
4 that before in her closing. But what does this show
5 about where she goes? Chong Lee -- can we run the
6 video again real quickly? We may go back a few
7 seconds just to set it in context because it goes so
8 fast.

9 ATTORNEY WEITZ: All right. Again we are
10 starting at 13:50:18.

11 ATTORNEY VISHNY: Go ahead, Mr. Weitz.

12 (Video played.)

13 ATTORNEY VISHNY: Stop. She's within a few
14 feet of Chong Lee. If she supposedly thinks somehow
15 that he's with Alyson, why doesn't she go after him?
16 Why isn't she yelling, help, that guy shot my
17 boyfriend? She doesn't know. Who is she going
18 after? She's going after Alyson. And as we know --
19 and I think we can just do this with the lights on
20 for a quick second. Keep playing the tape. Go
21 ahead. Thanks. Alyson goes to the right with the
22 guys who did the shooting.

23 Now, Alyson was in and out of this bar. She
24 came in with Chong Lee at one point. Brittany and
25 Josh weren't there. She came in and out with a

1 cigarette, according to the time line that Sergeant
2 Rabas developed, right, with Phong Lee both times.
3 We don't know where Brittany and Josh were at that
4 particular time. Brittany had been drinking and she
5 was extremely upset and she was not acting
6 rationally. She starts a fight with a woman, but she
7 starts a fight with the bouncers when she wants to
8 come back in. She's ready to fight. She's ready to
9 fight with the police officers. You heard the
10 testimony. If she thought it was Chong Lee, she
11 would have been pointing in that direction, but she
12 doesn't, she goes after Alyson, tell me where these
13 guys were. She has no idea who is whose boyfriend.
14 That's a red herring in this case, and I'm going to
15 talk about more red herrings later.

16 So what happens when the police come down to
17 Luna, and they're there with -- within minutes? It's
18 hard to imagine a crime occurring in Appleton,
19 Wisconsin that could be more detrimental to this
20 community than having a shooting occur at a crowded
21 bar on a Saturday night, Sunday morning full of
22 people. There are not a lot of murders in this
23 community, thankfully, as we all know, and
24 fortunately the police officers here rarely have to
25 ever investigate a homicide, but when it happens, you

1 can bet your bottom dollar that this is the most
2 serious investigation, that's why people are being
3 woken up at home within 20 minutes of this happening
4 and being told get down here. I don't care if it's
5 the middle of the night. You got to come down to
6 Luna now. That's why their lieutenant is telling
7 them to come down. This crime happens in the middle
8 of the business district, and imagine what this town
9 is like if people are scared to go downtown. So
10 there's a lot of pressure on the police. They are
11 involved in protecting this community and this crime
12 needs to be solved and it needs to be solved quickly.

13 So let's talk about what's at the heart of the
14 case, the witnesses that came into court who the
15 prosecutor is relying on but more importantly even
16 who the police relied on to lead to this prosecution,
17 because the heart of the case is are these people
18 believable. Because none of us were there or
19 actually witnessed this. The police weren't there,
20 they didn't witness this, but these people were
21 there. Can they be believed. Are they accurate.
22 Are they reliable. That's the questions you have to
23 ask yourself.

24 So let's start with them. First, there is "I
25 can't remember anything" Phong Lee. All right. So

1 what does he say when he comes into the court? Joe
2 is ahead, Paul is running already at the time of the
3 shot. Paul is in a fight. Phong, he's near the
4 front door at that particular time. The -- the fight
5 is at the half wall. You heard about that. But
6 Phong puts himself at the front door at the time this
7 happened. Now, what does the video show? The video
8 shows it's not true. You just saw that video. You
9 just saw those guys run out. You know that they go
10 Joe, Paul, Phong. It's not accurate. And then he
11 claims that he's got a sudden memory loss. Right?
12 He can't remember anything in this courtroom. So the
13 prosecutor starts questioning him, as they should,
14 about this so-called memory loss. And what do they
15 ask him about telling the truth? What does he say?
16 You're not telling the truth to help your friends.
17 And Mr. Maier said to him, so you don't tell the
18 truth to help Paul or Chong, and he says, no, just
19 Paul. Paul is the guy that he wants to protect, and
20 you heard it out of his own mouth in this courtroom.
21 That's who he's out to protect. That is his friend.

22 So what happens when the police go talk to him
23 on December 12th? You think that what's happened
24 before isn't on his mind, that the police had come
25 and threatened him and told him, hey, buddy, you're

1 going to get 25 to life, the kinds of things they
2 said to everybody, put yourself on the witness line
3 or put yourself on the you're going to be prosecuted,
4 you're part of a conspiracy line. He doesn't know
5 that? Right? Police come to his job, 11:20 in the
6 morning, McDonalds. He doesn't want to talk to them
7 there. We don't think he makes a phone call and find
8 out what's up in town, that Paul has been arrested
9 the night before, that Chong has been arrested in the
10 morning?

11 We know that the police talked to Michael Xiong
12 when Paul was taken downtown at the end of the first
13 interrogation in Norka. We know that Sergeant Thao
14 went up to Michael Xiong and said to him, look,
15 Paul's been arrested for this murder, you know, we
16 want Hu and Chong to come in and help us with this.
17 Michael Xiong lives with Paul and Paul's sister Xeng.
18 You don't think these guys are talking on the phone?
19 Why, if Phong Lee has a phone and isn't talking,
20 because remember, on December 9th he's had a phone
21 taken away from him, right, why does that phone have
22 a factory reset on it? Why did the police do two
23 search warrants for call records for Phong Lee's
24 phone? Because he has two phones. No matter what he
25 said in court. The police aren't out after his

1 mother's phone, they're out after his phones to see
2 what he's been doing. Right? He had plenty of time
3 to call. He was well prepared by the time the police
4 came in on December 9th. So there it is, and just to
5 be clear, because I -- it bears repeating, this is
6 the exact testimony that he gave in court. You don't
7 want to tell the truth until you have to help out
8 your buddy. This is by Mr. Maier. Answer: Yes.
9 Whether that's Paul or Chong? Answer: Just Paul.
10 That's what Phong Lee is all about.

11 Now let's talk about hothead Paul Lee. He also
12 suffers severely from selective memory. Do you
13 remember how good his memory was for the fight? He
14 knows that he went down to the bathroom, he came up
15 the stairs, he knows he did the punch with his right
16 hand, he knows the jacket that he had on, he knows
17 where Phong was, he knows where Paul was, and then
18 all of a sudden, poof, amnesia sets in when he gets
19 to the critical issues in the courtroom. Okay? What
20 does he say? I put it all behind me. Well, we can't
21 put it all behind us, and he hasn't put it behind him
22 either. That is one heck of a bologna excuse.

23 So what kind of person is Paul Lee? Or not what
24 kind of person, but what does he say, you know, oh,
25 he'll take on a guy with a bottle in one hand and an

1 e-cigarette in the other. No problem. He'll just
2 smash him over the head with the bottle. That's what
3 he says. And what does he think about the guy that
4 he hit? In court he says, oh, the guy was the same
5 size as me. No. He wasn't the same size. Paul Lee
6 is a very short guy, about five four or something of
7 that, I don't recall his exact height, but Josh, the
8 victim in this case, he's about six feet tall. We
9 know that from the testimony. A gun is a great
10 equalizer. A gun is a great equalizer. And what
11 does he say to the police? Big guy? No problem.
12 I'll take it on. No. His story does not make any
13 sense. He says the police forced him? They didn't
14 force him to say anything. They didn't hold a gun to
15 his head. They didn't deprive him of food or water.
16 They didn't beat him up. They used some methods that
17 are, again, unreliable statements, and I'm going to
18 talk about that a little bit later. What does he say
19 to the -- about ditching his clothes? Not my
20 problem. You remember that? Not my problem. So why
21 do you think he would tell the truth? He even gets
22 to a point in the police interrogation where he
23 completely denies that it's his coat or even that
24 it's him in the pictures. He says, oh, I wasn't
25 running out of there, I was fast walking. I had

1 nothing in my hand, he tells the police repeatedly.
2 I had nothing, I had nothing, I had nothing. Oh, I
3 have something, I have an e-cigarette, I have an
4 e-cigarette, I have an e-cigarette.

5 I think this is critical when Paul is talked to
6 the very first time by the police officers, what does
7 he say about what happened? He's here, Phong is
8 here, the fight happens here. So these arrows, they
9 go this way for the fight. So what's happening?
10 They're facing off towards the bar, Josh is facing
11 off towards them, and they fight. Josh's right cheek
12 is to the front door. Now I know there is a lot of
13 diagrams and people who say differently, but why is
14 this reliable and why is this trustworthy and why
15 should this be believed? Because this is really
16 important. Because Daniel Kersten saw Josh right
17 when he went down, and do you remember what he said?
18 He said his feet were near the end of the half wall
19 and his head was by the stairs. Have you ever seen
20 somebody suddenly pass out? If you've ever had that
21 experience, you know that when somebody suffers a
22 certain loss of consciousness, they go straight down.
23 Right? We don't know if backwards, forwards, but we
24 do know they go straight down. We know that Joshua
25 Richards from that video was face up when the cell

1 phone pictures were taken. That's what makes sense,
2 that he's there. He could have spun around, we don't
3 know that for sure, as he went down, but that's where
4 his body ends up. Because if it's what other people
5 said, if Joshua Richards is somewhere over here and
6 these guys are against this half wall here, he can't
7 fall with his feet over here and his head over here.
8 It's not possible.

9 You heard what the medical examiner said, this
10 -- his death was caused instantly. By the way, while
11 we're on Paul Lee and the medical examiner, Paul Lee,
12 oh, I didn't hit him, punch him to the side. You
13 know, Sergeant Rabas is telling him, look, you gave
14 him a left hook, because they know, the police know
15 right away even before the autopsy where the gunshot
16 went in. What does he say? I jabbed him in the
17 chin. And he claims he had an e-cigarette with him.
18 Well that e-cigarette, you saw the testimony, that
19 thing is not like a regular lightweight cigarette.
20 That's got some weight on that thing. There would
21 have been a mark if what he was saying is true. But
22 what makes a lot more sense about the way it happens,
23 he's fighting with him, right, and we know, anybody
24 who's been in a fight knows, and I will tell you I've
25 had other people tell me this because I have not been

1 in fights, but we know that when people fight each
2 other, it's not like this. Right? When people do a
3 fighting stance, they turn their body, they rotate
4 it, cock a hand back, other one is forward, cheek.
5 Paul is right handed, Josh is shot in the left side
6 of the cheek. We don't know exactly how it happened,
7 but what we do know is what the medical examiner told
8 us which is this could have happened from being hit
9 in the head -- in the side of the head with a gun
10 because it's a near contact wound and the gun could
11 hit, the bullet could go off, and what happens, what
12 happens with this bullet. The bullet angle is
13 sharply upwards, it's near contact, and it is
14 somewhat front to back. That is consistent.

15 Then there's "I'll tell you whatever I (sic)
16 want to hear" Joe Thor. So what does he do? He's
17 going to tell any story to anybody that's going to
18 work. Story one, December 9th, I wasn't there.
19 Story 2. Okay? Now when the police are talking to
20 him and they want Paul, what does he tell them?
21 Okay. He doesn't say I saw Paul do it. That's been
22 repeated over and over. We know that. But we also
23 know he's positive it's not Phong, he's positive it's
24 not himself, but when it comes to Paul? Hmm.
25 Possibly could be him, maybe it could be him, little

1 waffling there. And so the police come back on
2 December 9th. You think he doesn't know who's been
3 arrested? But just in case he doesn't, how does this
4 start out, by the police officers telling him, and
5 I'll get to a little bit more of that later, that
6 Paul and Chong are in custody and that he's got to
7 help his friend Paul. So what does he do? He has a
8 growing story. First he didn't see it. Now he says
9 he saw a gray sleeve. Then it's Chong told me on the
10 ride down. Then he goes inside and makes -- does
11 something for four minutes, and then he comes out and
12 says, oh, Chong told me he flushed a gun down the
13 toilet at Sharks. What is he doing? And do you
14 remember him in court the way he describes this
15 fight? That Paul is in a fight, that the half wall
16 is behind them. Paul is in a fight. Phong is on one
17 side, Joe is on another side. Arms outstretched.
18 Arms outstretched. Who the heck gets in a fight and
19 goes like that? Okay. Hit me now, big guy. Hit me.
20 That is bologna. It could not have possibly happened
21 that way.

22 Now what about Tou Shoua Lee? And I'm going to
23 talk about him more, but he's not a suspect. He
24 didn't run and dump his things in a dumpster. He
25 says when he testified that Chong Lee was closest to

1 the door. But you know what? That can't possibly be
2 true because -- and I'll just -- we'll just use that
3 diagram. That's fine. This isn't his diagram, but
4 just using it to kind of show you roughly where it
5 is. If Chong Lee is closest to the door and these
6 guys are back here the way he puts it, because he put
7 Josh, and it's on one of those boards, he puts him
8 kind of right here in between these foyers. Right?
9 If what he says is true, that Chong comes by and
10 shoots him, Chong's got to be the first guy out the
11 door. These guys are going to come later. I mean
12 they would have to walk over the body to get the heck
13 out of there. That's ridiculous. Chong Lee, first
14 out the door, what he thinks, oh, gee I just shot
15 somebody. Oh, after you. Please. Please, Phong,
16 please Paul, please Joe, why don't you go ahead of
17 me. I'll just wait here and see if there's a chance
18 I could get caught. Right? And I'll just go to
19 Sharks and I'll just, you know, I think I'll stick
20 the bullets down the toilet because it's really good
21 to walk around with an empty gun. You know? This
22 story doesn't make any sense.

23 Now I want to talk about the police. This trial
24 is not a referendum on the Appleton Police
25 Department. That's not what this trial is all about.

1 The police officers are good people. They care about
2 what they do. That is absolutely clear. And nobody
3 is criticizing them for the fact that they have ill
4 intent or bad motives or are trying to plant evidence
5 or anything of that nature. That is not what this
6 case is about. But you heard James Trainum, the
7 expert, the police expert, 27 years in the Washington
8 D.C. police department as a homicide detective, a
9 nationally known writer, speaker, trainer, a person
10 who goes and trains other police departments, that
11 when this happens, it's not done consciously, it's
12 done inadvertently, but there's still a problem and
13 it's still a mistake and it can still lead to the
14 wrong result.

15 So what happens as this develops? We have
16 witnesses, Daniel Kersten, Adam Richardson. They are
17 not asked to come back into the police department the
18 next day to be reinterviewed. They are interviewed
19 very briefly right at the scene. And while Daniel
20 Kersten has looked at some video or something of that
21 nature, Adam Richardson, who was looking right there
22 and sees this guy running out, number two, stuffing
23 something into his jacket, never did a photo lineup,
24 show him a bunch of pictures the way they're supposed
25 to do it, where you show the pictures. I mean we

1 have a procedure in Wisconsin, it's really, really
2 carefully designed. It's done to make sure that we
3 don't have mistaken identifications. That's why you
4 show the pictures one at a time. That's why the
5 Appleton Police Department, the officer showing the
6 pictures, they don't even know who the suspect is so
7 they can't even unconsciously communicate it. That's
8 how important this is. He's looking right at it.
9 They never show him pictures. All right? He doesn't
10 -- he says he doesn't know exactly who the shooter
11 is, but what about can he identify the guy, the
12 number two guy who he sees stuffing something in his
13 pocket? Would that not be important if he's looking
14 at his face? Wouldn't you like to know who he would
15 have identified the very next day while things are
16 fresh in his memory?

17 They focus on the first three people out the
18 door. And that's a smart focus because, after all,
19 these guys are booking it. Fast. Running down the
20 street. Paul Lee running with his hands in his
21 jacket pocket. Where do they go? To a dumpster.
22 Toss a hat, toss a vest. You know, even though Paul
23 Lee doesn't toss his clothing, he's with these guys.
24 He's the one with his hands in his pockets. Maybe
25 there's a reason he doesn't throw his coat in the

1 garbage. What's in that coat?

2 But instead of using the kind of interview
3 methods that Mr. Trainum talked about, instead of
4 talking to more people to get their story, what do
5 the police do? They've been, again, interrogating
6 these people, telling all three of them they're
7 guilty of something, using coercion, which I'll talk
8 about in a minute. That's what they do. And when
9 they switch the theory because things aren't going --
10 they're not getting anything, what do they do? They
11 switch their theory based on a rumor. All right?

12 Now, why does Alyson Blom tell Lisa that she
13 thinks it's Paul? Because she didn't see who the
14 shooter was, right? But she would know it's not
15 Chong, he's like literally right there with her. You
16 saw them coming down from the area of the bar, and
17 you see where they are in proximity to each other
18 when they go out the door. She's right by him. If
19 she saw him do it, she -- if he was doing it and
20 she's right near, she should have been in a position
21 to see that. But she talks to Lisa, somebody who is
22 not even there, Lisa who is the fiance or wife or I'm
23 not sure of Hu Lee, the brother, the older brother
24 here, and what does she say? Oh, she passes along a
25 rumor. Chong is the guy who did it. Well, where did

1 that rumor come from? Okay. Use your common sense.
2 That rumor was passed along on December 9th. Who was
3 at the Stutzman house on the evening of December 9th?
4 Joe Thor. You don't think these people talk to each
5 other, these witnesses who all walk into court and
6 say, haven't talked to them for months, haven't
7 talked to them for weeks. You believe that? You
8 know? You believe that, then I'm going sell you a
9 Caribbean island for a dollar tomorrow. So use
10 common sense. They have gotten together. They have
11 spread a rumor.

12 And what does Chong tell the police in his
13 interview? I have family problems. All right? So
14 -- and he specifically has family problems with Paul.
15 He tells that to the police. So it's not too
16 surprising that Phong, best buddy who only wants to
17 cover for Paul but not for Chong, and Joe who is with
18 them get together and spread the rumor. So the
19 police are operating on a rumor. And what don't they
20 do? They switch gears like that, right? Because
21 Paul Lee is taken into the police department right
22 after this interview at Norka which starts at about
23 9:15, so we know it's about an hour-and-a-half,
24 10:45, they're putting the cuffs on him and taking
25 him downtown. 12:41 Sergeant Thao is going in that

1 room with an idea that he can solve this crime
2 because of a rumor and starts suggesting it's Chong
3 Lee. That's what happens. Based on a rumor. Does
4 anybody first go to the Stutzman house and interview
5 her between 10:45? No. Does anybody find out how
6 this rumor is created? No. Does anybody do some
7 investigation? No. And so the police conduct their
8 interviews and the focus shifts. They're sure it's
9 Paul, then they're sure it's Chong.

10 And they disclose facts that shouldn't be
11 disclosed, things we call holdback facts, like it's a
12 .25 caliber bullet. I mean even Sergeant Rabas, when
13 he talks to Joe Thor again, says when Joe Thor asks
14 if it's a .22, well we can't tell you that. Even
15 that happens. You know?

16 Talk about it being a point blank shot? So
17 where did this word point blank come in? Okay? When
18 is the first time the word point blank gets used in
19 the case? It's used on December 9th when Sergeant
20 Schira is talking to Joe over at Lisa Stutzman's, and
21 what does he say, quote, you're standing right there
22 when it happened. You're right in the mix. Point
23 blank on the guy. That's the first time the words
24 point blank come in in this investigation, and they
25 continue, point blank continues. Because when

1 Sergeant Rabas talks to Paul Lee and is talking to
2 him and says they -- that he's the guy, he says, you
3 shot him in the head or someone else shot him in the
4 head point blank. The point blank word is in there.
5 So when Paul adopts that word later on, that's not
6 really very surprising because the word point blank
7 has been put out there. All right?

8 So what does Sergeant Schira say to Phong on
9 December 9th when he comes over and talks to him at
10 the courthouse? What does he say? And I'm reading
11 you quotes right out of these transcripts, and I'm
12 only selecting a couple because I'm sure you're like,
13 oh, my God, I've heard enough of this. We're not
14 going to stay here another two weeks to rehash this
15 whole thing. You can't get over the fact that we've
16 got a guy with a gun in his hand and you're in the
17 picture. And he says, you're not the one? You don't
18 have to convince us, buddy, you've got to convince
19 the DA's office that's going to charge you and the
20 jury that's going to look and say of course he knows.
21 Guilty. Guilty. Guilty. That's how Phong Lee gets
22 interrogated. And then -- but Paul Lee is not in
23 custody yet so there is still reason he's going to
24 try to cover up for his buddy.

25 And then they go to Joe Thor, it's the next day,

1 it's December 10th now. They go to Joe Thor the next
2 day, and what do they say to him? It's decision day.
3 Where do you want to fall on this? You can be a
4 witness or you can be party to the crime. You can
5 get on that witness line or it can be 25 to life.
6 And then Joe, what does he say? That's where he says
7 he's sure it's not him, he's sure it's not Phong, but
8 it potentially could be Paul, it possibly, as he
9 said, could be Paul.

10 So then they talk to Paul Lee, and, gee, what a
11 surprise, Paul Lee denies doing it. Paul Lee says,
12 I'm not going to take somebody else's time. Well,
13 duh. You think he's going to come in and say, yup, I
14 give it up, you yelled at me, I shot him. No. He's
15 not going to say that. All right? So Sergeant Rabas
16 is saying, you want to explain or do you want to go
17 down on this. And Paul is saying, no, I didn't do
18 it, I didn't do it. All right? I didn't do it. And
19 Sergeant Rabas is saying, you know, this is your last
20 chance, you're going to go down, all the way to life.
21 He talks about Paul blank -- point blank, excuse me.
22 Paul is going to own up? That guy? You think he
23 would take his own time? What he doesn't realize is
24 he's drawing a drawing that matches what happens and
25 puts him in position to have done it. It's easy to

1 deny stuff when the police are questioning you. All
2 right? Paul Lee, who cannot tell the truth to save
3 his life in a courtroom, who says, oh, I had nothing
4 in his hand, oh, I had an e-cigarette in my hand. I
5 mean, it's so ridiculous that -- you saw the tape, it
6 was played twice, Sergeant Thao is in the background
7 laughing about it. That's how ridiculous his
8 statements are. You know? And so he's told, you
9 know, we're going to take you to court. And it's
10 serious time now, it's not play time, because at the
11 end of this interview, after being told you can walk
12 out the door, he can't walk out the door. The cuffs
13 are on and it's time to go down to APD.

14 So then they get the rumor and the focus shifts.
15 12:41 a.m. You saw a long segment of that tape. You
16 got to watch it happen yourself. You saw that it was
17 soft tone but harsh words. Sergeant Thao: You're
18 25. I'm giving you the benefit of the doubt, that if
19 you're saying you're not the one but you hit him with
20 the gun, here's your last chance because there is
21 only two options, it's either you or it's somebody
22 else. And then later he says, I'm going to ask you
23 one question. This question is going to come down to
24 this -- to how you want to go about this, excuse me,
25 did Chong do the shooting. He suggests the name. So

1 here it is. A life preserver is being offered to
2 Paul. You think that guy wants to go down? You
3 think that guy doesn't think they're serious at this
4 point now that he's in custody? And what does
5 Sergeant Thao say? If you're trying to cover for
6 someone or Chong, you're going to go down hard
7 because we have the proof on you, but if you're doing
8 it for him because you happen to be the youngest son,
9 now is your time. Okay? And when he says that --
10 and again his story keeps changing too. Oh, I didn't
11 see it. Oh, Chong came over on Monday or was it
12 Tuesday, no, it's Monday, oh, he came over on Monday.
13 And they start talking about a checklist, right? And
14 then he starts talking about, no, he didn't come over
15 on Monday, actually I saw him at Joe's. And what
16 does Sergeant Schira say? We built this great case,
17 and all we got to do is get rid of this case. So
18 they want to enlist him to help. They tell him, talk
19 to Phong and talk to Joe. You got to get these guys
20 to go to bat for you.

21 And then let's look at this written statement.
22 So what do we know about these? Okay. Hopefully
23 we'll be able to get them side by side so you can
24 compare. Okay. So we can't do it, but these are the
25 words from the tape. Thank goodness we have recorded

1 statements in Appleton, Wisconsin and the State of
2 Wisconsin. So this is what they're summing up to
3 him. You got in an altercation with a guy by the
4 name of Josh at Luna. While you were struggling with
5 the guy, fighting with the guy, Chong stepped up,
6 shot him in the side of the head. You guys ran. Um,
7 roughly an hour, hour-and-a-half later Chong came to
8 Joe Thor's house where he admitted to you and Joe
9 Thor to, ah, to Phong Lee that he F'd up, that he's
10 going away for awhile, and that he shot the guy. Is
11 that about right?

12 Written statement. While I was in Luna coming
13 back from the bathroom me and Josh got into an
14 argument. When it got physical Chong came from
15 Josh's left side and point blanked Josh. After
16 leaving Luna, me, Joe and Phong walked to Joe's.
17 Roughly an hour later Chong shows up and told us he
18 had F'd up and shot Josh. Chong told me, Joe and
19 Phong that he ditched the gun and planned on leaving
20 town. If this were a high school paper, those kids
21 would be getting called in to the principal's office
22 for plagiarism. That's how close. No, of course the
23 words aren't exactly the same, but that's how close
24 it was.

25 So what happens? Paul offers to talk to Chong,

1 right? Well, I can go try to talk to my brother.
2 And why does he offer to talk to him? Because he's
3 the youngest one. And I'll get back to that later.
4 So here's a perfect chance to create some evidence.
5 These guys are both at Appleton Police Department.
6 What do they have? Rooms, cameras, recording
7 systems, systems that record when nobody else is in
8 the room. Remember how Paul told us he slept the
9 whole time in between these interrogations? He's not
10 sleeping. He's literally saying on the stand I'm
11 sleeping, and we're watching him on the tape, sped
12 up, he's clearly wide awake this entire time. All
13 right? So here's the perfect chance to bring Chong
14 in, you leave the room, you coach Paul on what to
15 say, just like this they had coached -- remember that
16 woman who was not a witness in this case, but do you
17 remember the testimony by Sergeant Tauber, the one
18 who told the teacher, Dalinda Guzman, in Green Bay
19 that she could lose her job if she didn't cooperate
20 with them and tell everything she knew? That she had
21 worked all these years to be a teacher? Remember how
22 they set up the secret phone call and he talks about,
23 well, I'm just -- I'm talking about that to set up
24 the secret phone call. Same thing could easily be
25 done here. These two guys could talk while the

1 police recorded it. Real evidence. Real evidence.
2 Not made up statements. Do they do it? No. So what
3 happens from there? It's all about tearing down the
4 case against Paul, and they use the same tactics
5 because they've built this great case that they said
6 against Paul, and what do they want? They want to
7 get the shooter. They want to clear the case. And
8 now what do they have that they haven't had? They
9 have a witness, somebody who is going to say Chong
10 did it. So they've got to go out and get other
11 people to say it.

12 So they go and they talk to Joe and they talk to
13 Phong. So what is said. So what does Rabas say to
14 Joe Thor? We can -- you can get yourself on to that
15 witness line. You remember what I talked about?
16 Yeah. And you can get off that 25 to life line
17 'cause you -- your family depends on you. Don't
18 forget about that.

19 We'll just take that off for now.

20 So we have a changing story, and you heard it.
21 They start by telling him, Chong's in custody, we --
22 Paul is not the guy who did the shotter (sic). He's
23 told that right up front. We went through this whole
24 thing in order. And they eventually get him to say
25 stuff. And what does he say? Oh, yeah, the gray

1 sleeve, you showed me the picture with the gray
2 sleeve. Remember that picture that he's shown before
3 where he doesn't want to say that Chong is there?
4 Right? And I'm sure, you know, I mean the prosecutor
5 gets rebuttal. I only get one chance up here, and I
6 can't read her mind. I don't know what she's going
7 to say. She may show you time lines, she may use
8 diagrams, she may say, oh, gee, you know, they didn't
9 coach him. Who -- I have no idea what the response
10 is going to be. But whatever it is, it doesn't
11 change the basic facts. Okay? He didn't identify
12 him the day before, maybe because he thinks Chong
13 will tell the truth about what happens. Maybe he's
14 worried that Chong will say that it's his brother.
15 Maybe he's not counting on Chong to keep his mouth
16 shut. We don't know what his reason is. We do know
17 that he saw that picture, he saw the gray sleeve.
18 And he's saying it to the police, I saw the gray
19 sleeve. Remember? That's what it was. Is this not
20 a bunch of nonsense?

21 I'm telling you something, these guys are right
22 there with Joshua Richards. They're facing off
23 face-to-face, they're buddies, they run, they throw
24 their stuff into the garbage can. You don't think
25 that they see who does the shooting? You don't think

1 that if they didn't come into court and tell the
2 truth they would tell you that they saw? Because
3 they saw. I don't care how dark it is in that place,
4 this is a ridiculous story and you shouldn't buy it.

5 So then what does he do? He goes in for the
6 four-minute break to supposedly get a phone number.
7 Right? And you're going to buy that he's just afraid
8 that his brother's phone is going to be taken away?
9 How about, hello, what's going on here? Did somebody
10 stick bullets down at Sharks? What up? Who's in
11 custody? What should I say? Police are talking to
12 me. And then he comes out -- because he doesn't say
13 anything about these bullets when he's out there
14 beforehand. No. He comes out, and you heard the
15 four-minute segment where they're again reminding
16 him, Sergeant Lietzinger is saying, you know you
17 could get life, you better tell us, and boom, this
18 new fact, this supposedly great fact comes out.

19 And I'm going to talk a little later why that's
20 bologna too because this bullet thing is a total red
21 herring because those bullets couldn't have been
22 there. We know that from the testimony.

23 And what does he say? They still think at this
24 point that Paul has the gun. They still think that.
25 And they ask him, what did Paul do with the gun.

1 What does he tell the police? Paul didn't tell me
2 what he did with the gun. I mean, really, talk about
3 talking out of both sides of your mouth.

4 And then what about Phong Lee? Okay? Phong has
5 been on notice. He's been seen. He's on notice.
6 They stopped by McDonalds. He's got some phone
7 somewhere. We know he's got two phones, two search
8 warrants. Oh, and by the way, speaking of not
9 getting search warrants for phones? No search
10 warrant for the phone that Joe's brother has to get
11 call records, that they're saying go in and take
12 these numbers? I mean this excuse about that phone
13 is not active? There is no carrier? Well, hello,
14 they're talking about phone numbers just having been
15 called the other day on it, they want him to go look
16 up a phone number and they never do a search warrant?
17 This is a really not very good excuse for not doing
18 the job.

19 So what happens when they talk to Phong? They
20 tell him who's in custody. And Sergeant Thao walks
21 him through it. So you guys walk up to Joe's place,
22 right? Phong: Yes. Sergeant Thao: Okay. Here is
23 really important, okay? We got you and Joe and Paul.
24 Phong: Yup. Went to Joe's house. Phong: Yeah.
25 Thao: Okay. I know for sure, and I got information,

1 corroborated by many people, you guys were there for
2 maybe half an hour to almost an hour. Yeah. Thao:
3 Chong shows up. Okay? Right? Phong: Yup. Thao:
4 And you guys went in the basement. Phong: Yeah.
5 Thao: Chong told you what happened. Yeah. Whose
6 words are these anyways? These are the words of a
7 man who made it perfectly clear on the stand he is
8 willing to cover for his buddy, Paul, but not ever
9 for Chong. And that was not a defense question.

10 So then let's talk about Tou Shoua Lee. What
11 does Tou Shoua Lee, now he's not involved in this, so
12 what does he tell the police? Okay. I saw a punch,
13 I heard a bang. And maybe it was an instant, and
14 maybe it was five to ten seconds, as he relates it.
15 Okay? We know he says both things when he's being
16 talked to. But how do people think about time? Do
17 you remember Josh's friend, or at least acquaintance,
18 I think acquaintance is more of a word, Michael
19 Verheyden who was on the party bus with him? Michael
20 Verheyden was identified in the video as walking from
21 the front of the bar, we see him go out of the
22 picture, and we know from this time line that
23 thirteen seconds later the guy he's come on the bus
24 is laying on the floor with a bullet in his head.
25 How long did Mike Verheyden tell you that he was up

1 there trying to watch to see if there was a fight so
2 he could intervene? His answer, ten minutes. That's
3 what people naturally do with time. Time seems
4 longer when you recount things. That's a natural
5 human trait. It makes much more sense that this was
6 instantaneous. Why? Because Daniel Kersten is
7 looking on that tape, he doesn't see anything worth
8 intervening, turns around, and boom, how many seconds
9 later is it that he hears the pop and goes over
10 there? That's just how fast this happened.

11 And so what does Tou Shoua Lee say to Sergeant
12 Thao? He doesn't know. What does Sergeant Thao say?
13 I think you have an idea. What does Tou Shoua? I
14 don't know. I'm serious. I'm honest. Sergeant
15 Thao: It's Chong. Sergeant Thao: I want you to
16 know you're not the first to name Chong as the
17 shooter. Excuse me, but Tou Shoua Lee had not named
18 Chong as the shooter. He never said that. He never
19 said that. What is it that he said? He's being
20 pressured into making a statement, right? So when
21 he's trying to tell him this, this isn't good enough.
22 And remember, Tou Shoua Lee, for whatever reason, is
23 afraid of the police. He's glad that it's Sergeant
24 Thao who has come over. He doesn't trust the white
25 police officers. He talks repeatedly about how he

1 wants to help himself. Something is going on here
2 where he feels he needs to go along, and Sergeant
3 Thao walks him through this statement and slowly by
4 slowly through making suggestions. And you saw the
5 cross-examination of Tou Shoua Lee. I know it's been
6 a while, been almost two weeks, but you saw what
7 happened and what he said. And what did he tell you
8 in court when I asked him? I asked him, so Sergeant
9 Thao is leading you into making this statement about
10 Chong Lee. Right. And you pretty much felt you had
11 no choice but to say this, didn't you? Correct. You
12 did have some fear that if you didn't name Chong
13 something bad would happen to you, right? Answer:
14 Right.

15 You know, I asked him leading questions.
16 Everybody has been asking leading questions in the
17 courtroom. And what you've seen is that we have a
18 judge here who, if something is improper about
19 leading questions, stops it and says this isn't right
20 in the courtroom procedure. There is no referee in a
21 police interrogation. The police can ask people what
22 they want in the way they want, and apparently they
23 did.

24 What's so interesting in this case is that the
25 only person who wasn't intimidated like this was

1 Chong Lee. He wasn't threatened with 25 years to
2 life. He wasn't told you need to be on the witness
3 line or this line. And he clearly didn't want to
4 even tell them he was there, right? You remember
5 that. He's not telling them the truth. He's at
6 first denying that he's there. How long does it take
7 them to get him to say I was in Luna and explain
8 what's going on. It didn't take very long, okay, 30
9 minutes, 40 minutes at the most? So it doesn't
10 require, as Mr. Trainum says, threats to people, it
11 doesn't require that to get somebody to say this.
12 Okay? And then they talk to him about what he knew.
13 And he's not going to tell on his brother. He's not
14 going to tell on the youngest brother. But what does
15 he say? You have video, show me the video. Okay.
16 Reminiscent of Paul? Except for one difference.
17 Here's the difference, and this is what Paul told us
18 in cross-examination about the video. Question: So
19 you figured they probably didn't have the goods on
20 you. Answer: No. I didn't think they had the goods
21 on me. They told me that they had the video, so why
22 not show me a video, why keep showing pictures.
23 Chong Lee says, go look at your video. See what it
24 says. All right? Now he doesn't want to tell on his
25 brother, but what does he say, a killer is a killer,

1 a murderer is a murderer. He is not going for their
2 common method of saying, look, this isn't so bad, you
3 know, nobody intended this. No. He says, a killer
4 is a killer, but he doesn't want to talk. And he
5 tells them that eventually, that he doesn't want to
6 talk to them anymore.

7 So what about these statements? What does James
8 Trainum say? He has studied false statements and
9 he's worked, he's written, he's a consultant to
10 police departments, and what he talks about is that
11 there is a certain method that can get false
12 statements. And despite the fact that there is
13 disagreement in the field of police work about what
14 to do among police trainers and educators -- and let
15 me just say something. There is a reason they have
16 training. Okay? Do you want police officers on the
17 street who haven't learned how to use their gun, who
18 haven't learned how to collect evidence properly, who
19 haven't learned how to take witness statements
20 properly? Is that -- that's not what we want.
21 There's a reason the Appleton Police Department and
22 police departments all over the country invest money
23 in training. And this Reid interrogation people go
24 and teach, including at Fox Valley Technical College.
25 And what do they say in their own manual? Manuals

1 that Sergeant Rabas and Sergeant Schira, training
2 that they've actually been sent to, and they're two
3 of the principal police detectives in this case.
4 What does Reid say? Now I have to resort to glasses.
5 It is psychologically wrong for the interrogator to
6 remind the suspect of the punishment for his crime.
7 The alternative question should not offer -- threaten
8 consequences or offer promises of leniency. And the
9 examples of improper questions? Do you want to
10 cooperate with me and tell me what happened or spend
11 the next five to seven years behind bars. And here's
12 another example. Do you want to be charged with
13 first-degree murder which will mean life in prison or
14 was this just manslaughter. And what do they say
15 about taking written statements? Do not dictate what
16 the suspect should write.

17 Yes, Chong Lee didn't want people to come to his
18 preliminary hearing. No dispute about the phone
19 calls, no dispute that they were made. Right? But
20 -- and the prosecutor has argued, and no doubt they
21 will argue in rebuttal, that this is evidence of
22 guilt because he wants to get out of it. He's a
23 guilty guy so therefore he makes that call -- those
24 calls, rather, and therefore he writes those letters.
25 But there's another way to look at this. I'm not

1 justifying the letters, I'm not justifying the calls,
2 but there's another way to look at it. It can be
3 looked at as guilty; it can also be looked at as what an
4 innocent person might do. He's arrested on December
5 12th. He's facing a preliminary hearing which takes
6 place on February 12th. Clearly the guy does not
7 want to sit in jail. Clearly he's telling witnesses
8 to say something different than what they told the
9 police. But who's to say that what they told the
10 police was true? We've already really gone over what
11 these guys have to say. These guys and truth are
12 total strangers to each other. They wouldn't know
13 what truth was if it came up and smacked them in the
14 face. So telling them to change their stories,
15 that's not necessarily something that an innocent
16 person wouldn't do. It's not proof that Chong Lee
17 committed this homicide. And that he says, I'm mad,
18 I hate him, I'm angry, you know, wants them to come
19 to court and say they lied. Well, they did lie. No
20 surprise there. And he's doing all of this knowing
21 he's being recorded, right?

22 And, you know, a lot has been made about Teng
23 Lee and these calls and what happened and, you know,
24 I'm not going to read call after call after call.
25 They've all been read to you. But just a few things

1 I want to point out with Teng Lee. Who is it that's
2 talking about going out and doing things with the
3 witnesses? Who initiates that conversation? Okay.
4 Teng is the one who talks about how he's going to
5 track down Stephanie and Melanie. Teng is the one
6 who says he's going to send a message. And on that
7 call, which is call 16 on January 29th, Chong doesn't
8 really respond or whatever he says is inaudible.
9 Teng then says he's going to tell Stephanie and
10 Melanie not to come, and Chong first says, I know,
11 you have to tell them. But later in the call what
12 does he say? Forget it. Don't worry. Teng talks
13 about this. He's the one who initiates. Teng Lee in
14 call 12 on January 22nd, he tells Chong that he told
15 Paul, you need to go to court and tell the truth.
16 Call 17, February 2nd, Teng tells Chong that
17 Stephanie and Melanie said they weren't going to come
18 to court. Chong is surprised and says, whatever,
19 you're serious, are you serious. Did he have the
20 intent if he sounded that surprised?

21 And, you know, what about the calls with Paul?
22 What happens the very first call, or one of the very
23 first calls? It's actually call number 3, but it's
24 on December 12th. Who is it that says, no, before
25 they got me mad so I got angry and I yelled

1 inaudible. Who says that first? That's Paul Lee.
2 So when Chong Lee is talking to somebody else and
3 saying Paul says that he's nervous and scared and
4 that's why he said that, he's repeating back what his
5 brother told to him. Okay?

6 So you've heard the evidence. You saw the
7 demeanor. Obviously Paul was scared and nervous.
8 And so the prosecution, you know, made a lot during
9 the trial, and maybe they're going to talk about it,
10 how Chong Lee says, mom didn't tell me to stay, I
11 would have disappeared already. Well what do we know
12 about Chong? He wanted to leave town before the
13 shooting happened. On December 6th, two days
14 beforehand, he sent a Facebook message, or his
15 account, there is a message from his account to
16 Melanie Thao, and what does it say? It talks about
17 wanting to leave town beforehand. Not liking
18 Appleton, wanting to leave. So that's already in
19 process. Did Chong Lee leave town? For a few hours,
20 a day, day-and-a-half. He comes right back. He
21 doesn't flee.

22 And Stephanie and Melanie on these calls at
23 various times, try and find the right ones, Stephanie
24 is saying, let's not talk because the police are
25 listening. What does Chong say? I don't care if

1 they listen. I don't talk about anything. What does
2 he say -- that's call 18 by the way. What does he
3 say on call 14 after Stephanie says she and Melanie
4 talked to the police? Say that if they talk to
5 Melanie already it's okay. It's okay. And then he
6 says, maybe they will try to bring you guys to court.
7 Forget it. Let them do it. I will go against them
8 in court.

9 But nobody is denying that these phone calls
10 were made. You have the words, these are long calls,
11 you have the words where there is critical points,
12 you can make your decision whether or not his
13 intention was truly to intimidate people or not. You
14 have the jury instruction, you will decide that.

15 Now, I just want to let you know that it took me
16 23 pages of notes to do this closing argument and I'm
17 on Page 19, because if I was sitting in your shoes, I
18 would want to be knowing how much longer this is
19 going to go. So I'm just going to tell you where I'm
20 at so you know because I only get one chance. The
21 prosecutor talked for a long time and she gets to
22 come up and offer rebuttal and I can't do that.

23 Here are some questions to go back and ask
24 yourself when you get in that jury room about what
25 happened. What does the video show? It shows that

1 Paul had something in his right hand. If he hit Josh
2 in the chin with an e-cigarette, why isn't there a
3 mark? Here's something to ask yourself. If Paul has
4 nothing in his hands like Joe Thor said and he's wide
5 open like that, why does he have something in his
6 hands seconds later? Is this punch and puff time?
7 That's ridiculous. If Paul has nothing in his hand
8 or it's an e-cigarette in the right hand, what's in
9 the left hand? The video appears to show something
10 in his left hand. What is it? We don't know.

11 If what these witnesses say is true, why don't
12 their stories match? Why do Paul and Phong say, you
13 know what, Chong came over and said he F'd up, he did
14 the shooting. Why does Joe tell the police, no, Paul
15 and Phong were gone and then Chong came over and told
16 me, and I think he's got different versions, either
17 that night at my house or on the ride down to
18 Milwaukee. Why don't these stories match? Because
19 if it really happened, these guys would get it right.

20 Why, if Chong is the shooter and is where the
21 prosecutor says he's standing, and the other people
22 didn't do it and they're backed against the wall, the
23 half wall, why isn't Chong Lee the first guy out the
24 door? They'd have to step over where Daniel Kersten
25 told you he fell down, and Chong Lee would have an

1 easy path to the door.

2 Whose hands do you see in the tape when
3 everybody is running up Division Street? You see two
4 different versions -- you've seen two different
5 versions -- I don't want to take the time to cue it
6 up, but you can ask to see it in the jury room. So
7 whose hands are out there as they walk out the door?
8 You see Joe's hands, you see Phong's hands, you see
9 Chong's hands, you see Alyson's hands. You don't see
10 Paul's hands for very long. You see the hands,
11 things in the hands, hands going into the pocket, and
12 he's running. And you think it's because it's cold
13 outside? Well, for heaven's sake, if you're fast
14 walking and it's cold outside, zip your jacket up.
15 Right? No. He's booking it, hands in pockets with a
16 coat he doesn't throw away.

17 Ask yourself, these guys really didn't talk to
18 each other for months? Really? When Joe is at Hu
19 Lee's house the next day and rumors are being spread,
20 when Phong Lee is factory resetting his phone, when
21 Joe Lee -- when Joe Thor, rather, goes in and has a
22 four-minute break and then comes out with new facts.

23 Ask yourself, if these guys didn't do anything,
24 why are they throwing their clothes in the trash?
25 Because they're scared? Of what? They think Chong

1 Lee is the shooter and he's going to come after and
2 shoot them? Remember that testimony? Oh, I heard
3 there is some Asian guys, they're afraid about what's
4 going to happen, what Joe Thor had said to the
5 police. They are aren't afraid of being shot, they
6 are afraid of Chong Lee. You don't dump your
7 clothing in the garbage can when it's five degrees
8 outside. Who are they afraid of? They're afraid of
9 the police. That's who they're afraid of.

10 And I want to talk about three red herrings in
11 this case. Okay? Number one, the coat. There is no
12 basis whatsoever for Sergeant Rabas's opinion that
13 the coat on the November 22nd, 2013, Hilton hotel
14 video when Chong checks in is the exact same coat
15 that he's wearing. And I, you know, prosecutor may
16 make much of this, show pictures, whatever, but
17 there's no basis to say that he had on a coat he had
18 on a little over a couple weeks earlier in Milwaukee.
19 And you know what? They had every chance to take
20 that video and show it to these witnesses, they've
21 had two years to go reinterview people, right? To go
22 verify and just show the pictures of Chong to people
23 he knows. They don't need to do lineups for people
24 who know each other. And say to Joe Thor, is this
25 the coat he was wearing; say to Phong Lee, this the

1 coat he was wearing; say to Paul Lee, is this the
2 coat he was wearing. They weren't even asked this in
3 court. They weren't asked. Why not ask? You know,
4 what we know about the Luna video is that things show
5 up differently based on the kind of fabric that they
6 are, and what we also know is that the police took
7 the DVR back to the Appleton Police Department. They
8 had it just a few blocks away. They have a coat that
9 they think is important enough to bring in from Chong
10 Lee's house, that they think is important enough to
11 send to the crime lab to see if there's blood after
12 Evan Weitz and I go to the police department and
13 start asking to see evidence, it becomes now
14 important enough to think about sending it to the
15 crime lab a month later. They've got the DVR. Okay?
16 I mean, look at the unbelievably beautiful high tech
17 creation of the Wisconsin State Patrol. Wasn't that
18 amazing to look at that? That thing is like a work
19 of art. All right? So we're high tech. Millions of
20 points for these lasers to get this beautiful view of
21 what Luna is, and you can't drag a DVR machine down
22 the block and stick the coat in front of it and see
23 what it looks like and how it looks, the coat that
24 you have in police evidence? You can't take Paul Lee
25 down there a few blocks and ask the owner to open the

1 place up and reenact what's in his hand under the
2 same conditions and showing both hands? You can't do
3 that? I mean, come on, that's investigation 101.

4 And what about these bullets that so much
5 importance is being attached to? Okay. Well, here's
6 what we know about the bullets. They weren't there
7 because the bathroom was cleaned. All right? Chong
8 Lee was at Sharks on December 8th in the early
9 morning. We know this. Those two young ladies gave
10 him a ride, gave him a ride to Joe Thor's. We
11 already know that, right? Joe Thor, who is kind of a
12 relative, gives him the ride to what Chong says is
13 his mom's house. They drive him over there. But
14 what do we know? The bathrooms are cleaned on
15 Monday. The bathrooms were cleaned on Monday, but
16 they were super cleaned on Tuesday. Remember the bar
17 guy, Phillip Moore, the bar manager, the one who has
18 to go fish the stuff out of the toilet, how he talked
19 about that, you know, it may be a lick and a promise
20 with some of the staff, and maybe you don't see, but
21 they do go and flush the toilets, right? That's what
22 they do. And then he goes there on Tuesday, he does
23 what he calls a deep cleaning. I mean, I was
24 thinking, wow, that guy should get manager of the
25 year for his cleaning job, right? And so he does it.

1 There is no bullets there. Those bullets get put
2 there later. And what does the plumber tell us?
3 Bullets are not going to come back up. Okay? You
4 can flush bullets down a toilet if you pour enough
5 water in quickly to get them down. The same lines go
6 through sinks and toilet into eventually the holding
7 tank, right? But bullets don't come back up. So
8 that's not possible. Those bullets have to have been
9 put there another time.

10 And what do you think, Chong Lee is going to go
11 frame himself by putting bullets in the toilet?
12 Well, we know the police certainly didn't do it. Who
13 did that? Who is throwing in bullets that are .25
14 caliber that just happen to match the gun that was
15 used, the gun that's never been recovered. And why
16 would they do it.

17 And finally, the bulge. The bulge that's never
18 been seen. Sergeant Rabas, who has studied this tape
19 and looked at it over and over again trying to find
20 out what happens, being sure that this is a gun at a
21 certain point in Paul Lee's hand, Sergeant Schira
22 being sure that it's a gun in Paul Lee's hand, and
23 now two years later a bulge is noticed on a frame?
24 Are you kidding me? Never written about in one
25 report, never one witness asked. We know the witness

1 who said somebody had a bulge in a coat pocket, that
2 was Adam Richardson, and Adam Richardson said that
3 about the second guy out of the door, and who was
4 that guy, it's Paul Lee.

5 So here's some things that aren't red herrings.
6 Daniel Kersten and Adam Richardson never
7 reinterviewed. Adam Richardson never shown pictures
8 to see if he can identify. No injury to Josh other
9 than the bullet, an injury that is consistent with a
10 fight, consistent with facing off with somebody, and
11 the left side of their face connecting with
12 somebody's right hand. No phone analysis of call
13 records of Joe's brother's phone. Phong having a
14 factory reset. Not taking the coat and the
15 e-cigarette to Luna. No secret recordings that could
16 have been made between Chong and Paul. No talking to
17 Lisa. They used methods that every -- that we know
18 from Mr. Trainum, an expert, a -- with 27 years and
19 hundreds of investigations, who has talked to more
20 homicide suspects than you're going to get in
21 Appleton in possibly 25 or 30 years, one of these
22 officer's entire career. What does he say? Those
23 methods are known to sometimes produce false
24 statements. Those methods are known to sometimes
25 produce false statements. He doesn't come in here

1 and tell you, well, this is false or true. That's up
2 to you, the jurors.

3 You have seen the witnesses yourself. You make
4 your own decision.

5 And what about these people that Chong Lee goes
6 and talks to and says, you know, I'm the shooter, I
7 did the shooting. What's the common denominator with
8 all of these people? They didn't believe him. Okay?
9 They're the ones who listened to the actual words.
10 You think Stephanie and Melanie Thao who go out to
11 dinner with him at Jet Sushi are going to go out
12 against the next night to BWB, Buffalo Wild Wings, if
13 they think this guy actually killed somebody? They
14 said they didn't believe him. Okay? Because
15 apparently he brags about stuff all the time that's
16 not true. Even bad stuff. Okay?

17 But you're not here to decide this case even on
18 whether or not you don't like Chong Lee. You don't
19 have to like him. Okay? This isn't about a
20 popularity contest.

21 What does Xai Thao say, what does Peter Moua
22 say, what did Jesus say? They didn't believe him.
23 They thought he was kidding. They didn't believe him
24 when they heard him talk. And what did Peter Moua
25 say? He said that Chong said he got the guy,

1 whatever that means, after he's threatened that he
2 can lose -- because remember what the police said,
3 they have connections with the radiology department.
4 We don't have the tape because that was lost, and
5 that's just a minor mistake in this case.

6 Now I'm going to talk a little bit about the
7 law, because this case has brought you from your
8 everyday life -- and I'm getting near the end, I'm on
9 my last page. This case has brought you from your
10 everyday life into a world that you don't inhabit.
11 It's brought you into the courtroom to learn about
12 shootings and police interrogations. It's brought
13 you into perhaps a culture that you haven't learned
14 about before. I think very few of you knew that many
15 Hmong people or Hmong cultures, some people, and I
16 don't remember, said they were interested. But what
17 is it that Paul Lee said during cross-examination
18 about his family when he was being questioned by
19 Sergeant Schira and Sergeant Thao who said there were
20 a lot of references to him being the youngest
21 brother, and I asked him, what does that mean to you?
22 That I'm the youngest. And I asked, that you're
23 supposed to take care of your mom because you're the
24 youngest, right? Yes. And you're supposed to take
25 care of your family. It's the obligation of the

1 youngest child. I'm supposed to be the success.
2 Yes. And just so I understand that, in your opinion,
3 in your personal culture, in Hmong culture, dating
4 even back to the old country, it's the responsibility
5 of the youngest child to take care of the parents,
6 correct? Answer: Yes. And to be the success,
7 right? Yes. And that's an expectation in your
8 family? Yes. That no matter how many sorrows or how
9 many problems there are with older brothers, or
10 whatever trouble they get into, you're supposed to
11 succeed, right? Yes. And so if there's a problem in
12 the family, it can go to other people but not you.
13 Yes. And then when I asked him it's the role of the
14 family to protect him as well, what does he say? No.
15 It's not their role. Just me. I'm supposed to be
16 the success.

17 The judge has instructed you, and you'll get
18 written instructions to go into the jury room about
19 what the law is, and the law isn't that you go in
20 there and you say, you know what, I think it could be
21 Paul, I think it could be Chong, you know, some
22 evidence seems there either way to me, so Chong's on
23 trial so I'm going to find him guilty. That's not
24 what the law is. The law is that even when you
25 suspect that somebody committed a crime, you have to

1 find them not guilty unless it's proven to you beyond
2 a reasonable doubt that this is the person who did
3 it, who did each and every crime separately. And
4 each and every charge here has a separate verdict.
5 So you have to look at each count and say has it been
6 proven to me beyond a reasonable doubt that Chong Lee
7 intimidated the witnesses. And there's a separate
8 count for Joe, for Paul, for Stephanie and Melanie.
9 So you have to look at those calls and do an
10 individual analysis and say did this happen. But
11 under those circumstances, and after listening to
12 those calls, you still have to make a separate
13 determination, did he kill Joshua Richards. That's a
14 separate determination from what he did on the phone.
15 And as we know, those calls can be looked at in two
16 ways.

17 So what is a reasonable doubt? What did -- what
18 does the judge tell us and what is the law? A
19 reasonable doubt means a doubt based upon reason and
20 common sense. It's a doubt for which a reason can be
21 given arising from a fair and rational consideration
22 of the evidence or, and key words, lack of evidence.
23 It means such a doubt as would cause a person of
24 ordinary prudence to pause or hesitate when called
25 upon to act in the most important affairs of life.

1 And they tell you, it's not to be based on
2 speculation, it's not to be based on what if this,
3 what if that. And that's not what I've talked about.
4 I have gone through the problems in this case. I
5 have gone through the problems in this case. The
6 prosecutor didn't prove it beyond a reasonable doubt.

7 What is your most important moment in your life?
8 Is it whether you should lay a downpayment on a house
9 and if you're getting a good price? Is it whether
10 you should take a vacation? Is it whether you should
11 marry somebody? Is it whether or not you want to
12 have a child? Is it whether or not you should go to
13 college for a certain career? Is it whether or not
14 you should take or quit your job? Whatever stops you
15 and says, you know, I need to think about that,
16 that's what a reasonable doubt is. Think about how
17 crucial this moment is when you sit in judgment on
18 somebody else. If you have something that says to
19 you, you know what, I don't think I can look at
20 myself in the mirror and say, you know what, I was
21 right about that. I didn't have any reasons to
22 doubt. If you don't have that, it's your job to find
23 him not guilty, and it's something that you have to
24 do.

25 I know that this is a murder case. This isn't

1 something small. This is a momentous decision that
2 you as jurors will be living with for the rest of
3 your life. Okay? But why do we have this
4 instruction? Because sometimes the police get it
5 wrong. Sometimes they do. Sometimes mistakes are
6 made, even by extremely well intentioned people who
7 want to solve a very bad crime. Things like that
8 happen. Sometimes it's suggested to witnesses,
9 things are said to witnesses that shouldn't be said.
10 Sometimes witnesses are told who the police want and
11 conform their statements accordingly. Sometimes the
12 right investigation methods aren't used, and that's
13 why the proof is beyond a reasonable doubt.

14 It's been a long couple of weeks, but two weeks
15 ago when I was asking all of you questions in the
16 jury selection process, I asked each and everyone of
17 you what is it that you are more worried about, are
18 you more concerned about convicting an innocent
19 person or are you more concerned about a guilty
20 person walking the streets free to kill again, and
21 all of you agreed at that point that you would follow
22 the law, that there had to be proof beyond a
23 reasonable doubt. Because you know what? Those two
24 things, they don't really work against each other,
25 because when an innocent person is convicted, there

1 is a killer out there who will never be brought to
2 justice. When an innocent person is convicted, there
3 is a killer out there who may hurt another person.
4 When an innocent person is convicted, somebody pays
5 the price for something they didn't do, and that's
6 why we have this system of justice so that it has to
7 be proven beyond a reasonable doubt and no juror
8 would ever have to have this on their hands. That's
9 why we have this system. It's every system that you
10 would want if it was your son or daughter sitting in
11 that chair. Everything that you would want. And
12 that's why we have the law.

13 We have made suggestions to you that it's Paul
14 Lee, but it's not our job to prove it's Paul Lee. We
15 have shown you a reasonable hypothesis, as the jury
16 instruction says. The jury instruction says if you
17 can reconcile the evidence upon every -- any
18 reasonable hypothesis you have to do so and find
19 Chong Lee not guilty. We have given you a
20 hypothesis.

21 We are not prosecutors. Proving a case beyond a
22 reasonable doubt is up to the State, and there's a
23 reason. I ask you to go back into that jury room to
24 weigh the evidence and to find Chong Lee not guilty.

25 Thank you very much.

1 THE COURT: Attorney Schneider, about ten
2 minutes to prepare?

3 ATTORNEY SCHNEIDER: Can we approach?

4 THE COURT: You may.

5 (Bench conference.)

6 THE COURT: All right. So we're going to
7 let counsel prepare. Realistically it will be about
8 20 minutes, and so feel free to -- if you haven't had
9 lunch, feel free to do so and we'll be back in a
10 little bit. Please rise for the jury.

11 (The jury was escorted out of the
12 courtroom.)

13 ATTORNEY VISHNY: Judge?

14 THE COURT: Yes.

15 ATTORNEY VISHNY: I would like to bring
16 something to the court's attention that I did not see
17 fit to interrupt my closing. Occasionally when I
18 glanced over, Sergeant Rabas was making faces at me
19 during my closing argument. I didn't want to
20 interrupt it. However -- and I don't know if the
21 court looked over that way or not. I am positive
22 that I saw this. I have never observed a police
23 officer act in that manner. I understand the
24 concerns of the Appleton Police Department, and it is
25 my job to attack their investigative methods.

1 However, I feel that's uncalled for. I am asking the
2 court to either remove Sergeant Rabas from the
3 courtroom for the District Attorney's rebuttal or
4 make it clear to him and every police officer in this
5 room and every person in this room that faces should
6 not be made, whether it's to disparage the defense or
7 to cheer for the prosecution team. I have never
8 witnessed this occur in a courtroom in my entire
9 35-and-a-half year career as a criminal defense
10 lawyer, and I am appalled and shocked and disturbed.
11 That's all I have to say.

12 THE COURT: Thank you, Counsel. And
13 certainly, if that did happen, certainly I extend my
14 apologies for that.

15 What I am going to indicate, and it's true of
16 counsel, of those sitting in front of the bar, seated
17 behind the bar, I expect as I had indicated the
18 utmost professionalism at all times in here. I
19 expect no expressions one way or the other, either of
20 displeasure or pleasure. On that same token, I'm not
21 going to order Sergeant Rabas to be removed.
22 However, if I do see any expressions, I will, albeit
23 in a subtle way, remove those individuals from the
24 courtroom for the remainder of the proceedings.

25 ATTORNEY VISHNY: Thank you.

1 THE COURT: All right. Thank you, Counsel.

2 (Court in recess.)

3 ATTORNEY VISHNY: Judge, there is a couple
4 of things. Number one, I want to acknowledge that
5 while I was talking in the closing when I looked over
6 at counsel table that I think I may have made a
7 mistake in the closing because I saw something in
8 Miss Schneider or Mr. Maier's face, and I wondered if
9 I had argued outside of the record on something which
10 was -- I said that -- and I may have confused and
11 thought I had done this, but I don't know if it was
12 testified to in court or if I'm getting it from the
13 transcripts about Joe Thor saying he was afraid
14 because there were Asians shooting in the bar. I may
15 have made a mistake. I want to apologize to counsel
16 and the court for that error.

17 I also, regarding the State, I think we've seen
18 now the exhibits. I don't know if there are any
19 other exhibits the State is intending to use, you
20 know, and I'm sure the State won't argue outside the
21 record but just my standard practice to ask the court
22 to make sure that that doesn't happen.

23 ATTORNEY SCHNEIDER: Quite honestly, I
24 don't ever recall Adam Richards saying he saw
25 somebody stuff something in his pocket, and I was --

1 he was my witness so I take extensive notes, and he
2 talked about a guy in a white hat, so I think you
3 argued outside the record but I wasn't going to
4 object in the middle and have the court reporter pull
5 up the transcript but --

6 ATTORNEY VISHNY: Our notes say that he did
7 say that the second person was concealing something
8 in the pocket. So if I made a mistake, I made a
9 mistake.

10 ATTORNEY SCHNEIDER: I'm not going to --
11 yeah.

12 ATTORNEY VISHNY: You can say that, you
13 know, your recollection of the testimony is that
14 counsel was wrong. So, I mean, our notes said that.

15 THE COURT: Attorney Schneider.

16 ATTORNEY VISHNY: We all have it in our
17 notes.

18 THE COURT: Attorney Schneider, I'm
19 assuming you don't want me -- you're not asking me to
20 take any action on that.

21 ATTORNEY SCHNEIDER: No.

22 THE COURT: Just to leave it.

23 ATTORNEY SCHNEIDER: Yeah.

24 ATTORNEY VISHNY: Okay. So, you know, I --
25 we all had it written in our notes. That's where we

1 checked.

2 THE COURT: I don't think it was done to
3 intentionally, you know, try and get something in.

4 ATTORNEY VISHNY: So all I would ask is --
5 and obviously, you know, if I have made a mistake --
6 and the State has every right to talk about their
7 recollection of the evidence as opposed to mine.
8 And, you know, the jurors have notes and they can
9 make a decision, they can ask for readbacks. But
10 what I am asking is that there not be argument that
11 infers that somehow the defense is blowing smoke and
12 just putting up smoke screens or words to that
13 effect. That's improper argument. I have never,
14 obviously, observed Miss Schneider do a closing
15 argument, I'm not familiar with the practice, but
16 I've seen this happen a lot in general with
17 prosecutors, and I just want to make sure that
18 suggestions that somehow the defense is just making
19 things up, you know.

20 THE COURT: I don't -- I mean, knowing this
21 counsel --

22 ATTORNEY VISHNY: Right. I'm not saying
23 she would by the way.

24 ATTORNEY SCHNEIDER: I might point out that
25 you completely took them down the wrong path with the

1 Jared Randall video because I think I'm allowed to
2 talk about that.

3 THE COURT: Jared Randall?

4 ATTORNEY SCHNEIDER: She showed a video to
5 Johnny Thao and isn't that Alyson Blom and isn't that
6 her in the boots. And then later when he came he's
7 not --

8 ATTORNEY VISHNY: Of course you can say
9 that that mistake was made or that, you know, that I
10 asked -- I mean the answer is he said no so that's
11 fine. I mean -- wait a minute. One second.
12 Actually -- actually, let me say this. I do object
13 to that because this is rebuttal. Rebuttal has to
14 cover what the defense did in its closing. Johnny
15 Thao was never referred to in my closing. That video
16 was only referred to the extent that it showed people
17 running with their hands and where their hands were
18 located, so discussion of that would not be proper in
19 a rebuttal argument.

20 ATTORNEY SCHNEIDER: If it's me saying why
21 I believe Chong's the shooter and you're saying
22 Paul's the shooter then I think that's fair game.

23 THE COURT: I -- for that reason I would
24 allow it.

25 ATTORNEY VISHNY: Okay. But I --

1 THE COURT: Noted for the record.

2 ATTORNEY VISHNY: But, you know, if they
3 want to point out the defense cross-examined a
4 witness and they showed a video and the witness told
5 the defense lawyer they were wrong, that's obviously
6 fair game, but to say that this is like somehow a
7 smoke screen or trying to lie or trying to confuse
8 the issues is I think not proper, as well as any kind
9 of burden shifting that somehow it's some kind of
10 obligation for the defense to have put on certain
11 witnesses or, you know, call -- inferences like that,
12 and I -- unfortunately, I've seen it in a lot of
13 prosecutor closings, and I really don't want to
14 interrupt Miss Schneider, but if it happens I don't
15 have an alternative because I don't have another
16 argument so --

17 ATTORNEY SCHNEIDER: No. I can tell you I
18 take offense to you saying there's a red herring. I
19 have red hair, maybe I consider that offensive, but I
20 know it's a term people use. I know it's a term
21 probably people 20 years ago used. I don't know
22 that's a practical term half our jury understands.
23 So I'm going to stick to what I'm going to stick to
24 to say why we think Chong Lee did this. I think I
25 can say they distracted you or tried to distract you,

1 that's typically how I say it. I might say they're
2 trying to lob softballs on you that aren't focused on
3 what the issue is, but I don't say smoke screen, I've
4 never said smoke screen.

5 ATTORNEY VISHNY: First of all, if I
6 offended you, I really apologize because that never
7 even occurred to me and I'm very sorry. And it's
8 probably something I should have thought of and I'm
9 really sorry. So just -- I was thinking of a fish.
10 And I think saying that, I'm sorry, Miss Schneider,
11 what you said that the defense is I -- I think that
12 that's proper -- improper argument. I'm not sure
13 what the phrase was that she just said.

14 ATTORNEY SCHNEIDER: Distract you.

15 ATTORNEY VISHNY: The defense is trying to
16 distract you from the truth. No, the defense is
17 arguing the facts can be looked at a different way.
18 It's improper argument to say the defense is trying
19 to distract you from the truth. That seems to me to
20 be blatantly -- or to say the defense is trying to
21 lob softballs.

22 THE COURT: I think Attorney Schneider can
23 say this is what we believe is the truth and we
24 disagree with what the assessment is.

25 ATTORNEY VISHNY: Absolutely. I -- I mean

1 we're not supposed to say we believe, but that's a
2 common error of speech lawyers make all the time. I
3 may have done it. But to say that the defense is
4 trying to distract from the truth, that kind of
5 language is improper prosecution argument. So I'm
6 going to ask the court to rule on that, you know, or
7 that the defense is lobbing softballs. To say we
8 look at the evidence, we proved this case beyond a
9 reasonable doubt, here are the facts, that's
10 absolutely what they should be doing, they should
11 absolutely be disagreeing with me, but I really --
12 that's why I'm asking in advance so I don't have to
13 interrupt, but so that's my request.

14 THE COURT: And what I'm going to allow is,
15 Attorney Schneider, you can say this is -- if you
16 want to address directly on point what the defense
17 has said and this is what they've presented, but
18 here's why we think this is what the version is, or
19 the true version, that I'll allow, but I don't want
20 to, again, no colloquialisms of we think they're
21 lying or --

22 ATTORNEY SCHNEIDER: I don't say that.

23 THE COURT: I know you wouldn't.

24 ATTORNEY SCHNEIDER: Presenting issues that
25 we think are irrelevant. Can I say that?

1 ATTORNEY VISHNY: Of course.

2 THE COURT: Okay.

3 ATTORNEY VISHNY: Yeah. I think that's
4 absolutely fair game as opposed to distract you like
5 there is something sleazy going on here.

6 ATTORNEY SCHNEIDER: I just need one
7 minute.

8 THE COURT: You let me know when you're
9 ready, Counsel. I won't -- you're not -- you're not
10 rushed by me.

11 (Court in recess.)

12 (The jury was escorted into the courtroom.)

13 THE COURT: Attorney Schneider, whenever
14 you're ready.

15 ATTORNEY SCHNEIDER: Thank you.

16 I want to again thank each and every one of you
17 for your time and your attention and your focus. I'm
18 sure when you got the jury summons you might have
19 gone yuck and maybe a few other things, but we do
20 appreciate your time and all the attention you've
21 given to this case, and we're going to spend a little
22 more time with you and us here in the courtroom and
23 then go back and start to deliberate.

24 Rebuttal is the opportunity for the State to
25 come back up because it is the State's burden to

1 prove to you the elements of the crime. Did this
2 defendant cause the death of Joshua Richards, did he
3 intend to do so, did he possess a firearm. We
4 already agree there's been a prior felony conviction
5 before today. Did he then follow up and attempt to
6 prevent or dissuade Stephanie, Melanie, Joe and Paul
7 from coming and giving testimony at a hearing that
8 was required in this case.

9 And I have to apologize in my most sincere way,
10 because every time I get up at this point in a trial,
11 I can't ask you, please show me, and please do not
12 raise your hands, but I can't ask you, by a show of
13 hands, you know, is this issue that we believe the
14 defense is bringing up that we believe is irrelevant,
15 is that already clear in your mind. I can't ask you,
16 you know, this guy, do you agree with this guy
17 because I can't ask you that question either. So I
18 need to go through some things because it is the
19 State who bears the burden to prove to you. So there
20 may be things I talk about that you may be thinking,
21 you know, Miss Schneider, after last Wednesday's
22 testimony I knew what my belief was on that. I
23 really do apologize if I start to talk about things
24 that I believe defense has presented that are
25 irrelevant to your decision and your focus which

1 should be a search for the truth.

2 The State does bear the burden of proof. In
3 jury selection, defense counsel talked about burden
4 of proof and made a reference to a touchdown. Well,
5 you either score a touchdown or you don't score a
6 touchdown. It's not like they give you
7 three-and-a-half points on a touchdown. It's not
8 horseshoes. Burden of proof is, if I'm painting you
9 a picture of a tree, and I paint you a trunk and I
10 paint some branches off of it, maybe I start to paint
11 a few leaves, I don't need to paint every last leaf
12 or every branch on that tree before you look at it
13 and know beyond a reasonable doubt it's a tree. Your
14 job, as the judge has instructed you in this case, is
15 you are not to search for doubt. You are to search
16 for the truth. And the truth of this case is that
17 you can't just so happen to have so many things
18 happen in this case unless the State's theory and
19 what you've heard from our witnesses is correct and
20 that this defendant caused Joshua Richards' death
21 intentionally on December 8th, that he possessed a
22 firearm on that day, and that subsequent to that he
23 intimidated or attempted to prevent or dissuade all
24 of those witnesses from coming in.

25 This -- I'm not really going to focus on things

1 that I think at times have been brought up. The
2 parking ramp images I think with Johnny Thao who was
3 testifying, some images were shown, isn't this Alyson
4 was questions asked of him. Jared Randall came in
5 and told you, that's not me, that's not Alyson.
6 Okay? Things that are irrelevant.

7 Reid technique. It is not a requirement, and I
8 think some of you reacted when you heard this, in any
9 way in the entire State of Wisconsin that you be Reid
10 trained to be an officer. It's one technique, it is
11 one approach. But we heard a lot about Reid, and
12 then we had officers testify who had never been
13 trained in Reid. As they told you, there is other
14 trainings. It's one method or one approach.

15 I'm going to have to show you that jacket in a
16 little bit, and we'll talk through that jacket and
17 why Sergeant Rabas came to the opinion very early
18 this isn't the jacket the defendant was wearing in
19 the Luna images.

20 One thing I think should be stressed, you are to
21 first decide and deliberate on first-degree
22 intentional homicide. Intent can be formed at the
23 moment or the instant before the act is being
24 committed. At the moment he's intentionally removing
25 that firearm and pointing it up to Josh's head,

1 intentionally squeezing that trigger and sending one
2 bullet into Josh's head. No one in this case is
3 saying that it was preplanned, that there was
4 premeditation. This case is about someone who saw
5 his brother arguing or getting in a fight with
6 someone as he's walking in through the bar, pulls out
7 the gun because he's pissed, as he told Stephanie
8 what he saw, or Melanie, he pulls out the gun and he
9 shoots the guy. It's an intentional act. This isn't
10 reckless. Only if you do not agree that it is
11 intentional should you go to reckless.

12 When you look at reckless, who would say that it
13 is not reckless? Who would say doing that shows any
14 regard for human life? I don't believe the evidence
15 and the testimony even comes close.

16 So while people sometimes struggle with why did
17 this happen, that's not a job or a question for you
18 to answer. There is never a good reason why someone
19 puts a bullet into someone's head, why someone
20 intentionally brings a loaded firearm to a bar
21 downtown where you're drinking, where someone pulls
22 that gun out and puts it within inches of someone's
23 head and pulls that trigger.

24 Dan Kersten tells you he's sober and he's
25 standing by that doorway. He's looking back and

1 forth. He didn't -- at least the State believes he
2 never told you that he was worried about this fight
3 or this argument. No. He said he had passed by the
4 area where this was going on earlier and he saw some
5 of the same people but there was nothing going on.

6 I think defense showed you Adam Richardson
7 again. Adam doesn't turn until the time of the shot.
8 Adam's sweet talking or talking to the girls who are
9 standing in front of him. They're waiting to get a
10 car. Adam isn't watching this fight. Adam describes
11 a person he saw in that area wearing a white beanie,
12 or we would call it a stocking cap. It's Michael
13 Thor has that type of hat on when they run out the
14 door. He sees then this mass goes by. Michael Thor
15 is actually one of the last people before there's a
16 span of time. Adam Richardson never said, I saw the
17 shooter, this is what the shooter was wearing.

18 And Mike Verheyden, he thought everything was
19 done. He -- the fight was over, it was not ramping
20 up, so I'm going to go have my cigarette, and then
21 (prosecutor slams fist on podium) no reason, no
22 warning, a boom sounds out and Josh is on the floor.

23 Defense may have made a point or an issue of the
24 fact we had a lot of people run out of the bar.
25 Yeah. We had people who had nothing to do with this

1 run out. Like Alyson, she had nothing to do with
2 this. Dalinda had nothing to do with this. Tom Lee,
3 he comes strolling through, you see right behind him
4 is Chong with his hands out pushing him out the door.
5 You can watch the video and make the assessment.

6 I asked Sergeant Thao yesterday, when you made
7 the observation of Paul Lee holding an item in his
8 hand that you thought might be a gun, did you put in
9 a report on this date and time I saw this. No,
10 because they can make observations. No different
11 than the observations he makes about the right pocket
12 of the defendant as he's walking out the door.

13 Sergeant Schira told you he's a firearms guy.
14 That .25, his hand is bigger than mine, four inches I
15 think he said, a .25 can be. Small weapon. He talks
16 about being a firearms guy. When he sees that
17 e-cigarette, which back in December of 2013 wasn't a
18 thing as popular as they are now, when he sees that
19 image, in his opinion that's the same thing, that's
20 what it was. No, they don't take Paul back to Luna
21 to try to do an exact image with that DVR because the
22 DVR system had been completely removed. And you saw
23 from the video, we don't know what color and clothing
24 shows up against or as. So I could take a picture of
25 all of you, everybody's clothing is going to be

1 different. So how can we exactly replicate that back
2 at Luna because the woman who is standing in that
3 area, it's her elbow where you see Paul's hands, I
4 don't know what fabric, polyester, leather, cotton,
5 shiny material of a winter coat she had on. So how
6 are we going to exactly replicate that? There was no
7 way to. So they took photos of Paul holding that
8 item. Photos against a white board and photos
9 against a black to show the difference whether it's
10 reflecting against black or reflecting against white.
11 Paul talks about that e-cigarette at least three or
12 four times, according to Sergeant Rabas and Sergeant
13 Thao, when they're at Norka. When he's saying, what,
14 do you think I'm the shooter. And they saying, what
15 is in their hand, look at this, what's in your hand.
16 His e-cigarette could be in his hand. That's what he
17 had that night. He had just come up from the
18 bathroom.

19 Defense wants to make a big issue of Paul
20 running with his hands in his coat. It was five
21 degrees out we heard. He didn't zip up his coat. He
22 told you he had been shot before, so when he hears
23 that pop, I'm out of here. He doesn't ditch his
24 clothes, he tells you, and the State believes the
25 evidence and testimony shows he doesn't have any

1 reason to. When he sees Phong and Joe doing that, he
2 says to them like what are you doing.

3 I want to spend a little time talking about Mr.
4 Trainum. He comes in, talks about Reid, talks about
5 techniques, but agrees with me there is no technique
6 you need to follow, that you're required to follow,
7 that by law you must follow. The judge has ruled
8 what's admissible, what you get to hear in court for
9 testimony, what officers did or didn't say during
10 those interviews. There is no requirement, I asked
11 Sergeant Rabas, anywhere in the United States that
12 people be Reid trained. No. I thought it was
13 interesting that Mr. Trainum said, you know, he
14 thought it was improper when they were asking
15 witnesses, why did this happen, why did this happen,
16 was somebody coming at you, why. Can you imagine a
17 case where you have a fight and they don't
18 investigate self-defense as part of that, where they
19 don't try to figure out were you coming at -- was
20 somebody coming at you and it justified that? So
21 when Mr. Trainum says, oh, that was improper, they
22 shouldn't have been pushing like why did this happen,
23 they absolutely must ask that question. They must
24 look into those issues.

25 Officers in this case did go out and corroborate

1 all of the facts in this case, the State believes the
2 evidence and testimony shows. The officers in this
3 case told you there is no one set pattern you can use
4 when interviewing people. You have to go based upon
5 the person you're speaking with.

6 We know from Mr. Trainum's testimony he wasn't
7 given everything. I asked him if he had seen Hilton
8 images, images of the defendant in the coat, the
9 different coats, no, he hadn't gotten those things.
10 The State's position, and I asked him this, it's a
11 Monday morning quarterbacking. It's great to come in
12 and nitpick and say you shouldn't have said this, you
13 shouldn't have said that, but that's not what these
14 officers did. They did not elicit false statements.
15 I asked him, what can you tell me about what
16 percentage of this technique results in false
17 statements, and he doesn't know, he can't say because
18 there is no statistics about that. It may produce
19 false statements.

20 These officers described for you that they have
21 to take it with who they are talking to, who they're
22 speaking with. People who immediately tell you eight
23 times, nine times, I wasn't at Luna, do you think
24 it's fair for the officers to go, okay, thank you so
25 much, I'm going to leave now because we're only

1 investigating a homicide and you're telling me you
2 weren't there but I know you were? Do you think that
3 would have been appropriate for any one of them to
4 take that approach to this case? No. Some of these
5 people don't want to talk. Sergeant Schira used the
6 word street vernacular. You sometimes got to talk to
7 them at that level, get them to understand. None of
8 these people wanted to be the first one to say what
9 had happened. And I think you could also see they
10 don't want to talk about other people that are there
11 because they know that officers are going to go talk
12 to those people, so while they may be willing to say
13 this is what I heard, they're not going to want to
14 say initially, yeah, and go talk to Joe and Phong and
15 all these other people who we saw there because they
16 know the police are going to. And what are their
17 friends going to say to them? Why did you put my
18 name in it? I don't want to be involved in this.
19 You heard that from Alyson Blom. She didn't want to
20 know after the fact.

21 There is a lot of difference -- and one thing I
22 didn't ask Mr. Trainum about this, is the tone and
23 intonation in your voice. There's been a lot of
24 times officers were shown transcripts. Didn't you
25 say A, B, C, D, E, F, G. Or Mr. Trainum was reading

1 things to you. Unless he's a linguistic specialist
2 or expert, it's his own tone, his own voice on it. I
3 can say please go clean your room now to my kids.
4 That is one me. I can say please go clean your room
5 now. It has a completely different meaning. So when
6 you're using transcripts and you're reading from
7 them, you can give whatever spin you want to them.

8 Joe tells you he's scared for his family and for
9 himself. He doesn't want to talk about it. Phong's
10 first reaction, I don't want to be a snitch, I don't
11 want to talk about what I know or what I saw. Nobody
12 calls the police to report what happened. Dalinda
13 did. Marissa and Talisa did.

14 When Joe goes back in for this four minutes of
15 time on December 12th after Sergeant Rabas is there
16 talking to him at 1:00, they're asking him to go
17 check on his brother's phone, Chur's phone, because
18 Joe doesn't have his old cell phone. There's even
19 discussion about that. You didn't -- Sergeant Rabas:
20 You didn't want to bring us Chur's phone. Because
21 they had already taken his other brother's phone,
22 Cassidy's phone. And he says, yeah. It's not Joe in
23 four minutes calling, hey, yeah, yesterday did you,
24 Phong, or Paul, um, yesterday, did you go plant those
25 bullets like we talked, those .22 bullets. Because

1 if you listened to that conversation, immediately
2 after that when he brings up the bullets, he says,
3 well like you told me they were .22s, right? He says
4 that twice to Sergeant Rabas. Joe is not a master
5 mind, by any extreme stretch of the imagination, but
6 if Joe had gone to plant bullets based on that, the
7 people at Sharks would have find .22s, not .25s.

8 Now, Mr. Moore, I know he comes in and he
9 testifies, and he testified right after the owner,
10 the manager. I think he talked about, I'm going to
11 use his term, you know, at the end of the night they
12 may like make sure there's no floaters, is what he
13 said, and flush the toilets. Then on Tuesday they do
14 this cleaning. The way he described it you would
15 have thought he cleaned that toilet as if Queen
16 Elizabeth herself was walking in. What do you think
17 really is done to clean a toilet at a pool hall? And
18 when it appears, this is a horrible way to say it,
19 stuff rolls downhill at that pool hall, because the
20 owner didn't want to get the bullets he made the
21 manager do it. So I'm sure the manager has the
22 employees clean. Mr. Peotter tells you you'd have to
23 dump a five-gallon bucket quickly down to possibly
24 get those bullets to flush through. Those bullets
25 were there because the defendant put them there after

1 he ran from Luna.

2 Stephanie -- I'm sorry, Melanie tells you about
3 the gun. He told her he broke it down and threw it
4 in the lake. We weren't going to find it, despite us
5 trying to pump everything out that we could possibly
6 pump out in this case.

7 Defense talks about cell phone records. I
8 should have gotten cell phone records. What was it
9 gonna tell us? People who knew each other were
10 talking to each other or calling each other. Doesn't
11 -- isn't going to tell us exactly who was on either
12 end of that conversation, wasn't going to tell us
13 what was said in any of those conversations, and
14 within the first few days after this, we had many of
15 their phones. So defense can claim we should have
16 gotten cell phone records or should have looked into
17 cell phone records. They weren't gonna tell them
18 anything other than these people called each other a
19 lot.

20 Defense wants to make issue or brought up the
21 fact of the jacket and the coat. Sergeant Rabas has
22 watched this video a number of times. He's been able
23 to see how different colors reflect differently. I
24 think one of the officers maybe even talked about how
25 his own coat may have reflected differently or

1 Sergeant Meyer's black leather coat shows up all
2 black. We get a video image -- and I should back up.
3 January -- December 12th Joe Thor's talking about
4 seeing a gray sleeve by the hand, striping is even
5 what was testified about. December 18th, Tou Shoua
6 Lee remembers Chong's coat being gray with darker
7 sleeves. No one from Appleton Police Department had
8 seen any color images of the defendant in any coat by
9 the time those descriptions were given. They can't
10 plant in their mind saying say it's blue, black, gray
11 or white. They know that video may show something
12 gray, and you have no idea what color in the spectrum
13 it comes back. So those two individuals give those
14 features about that coat when they don't yet have
15 this image of Chong Lee checking into the Hilton -
16 they get it on December 19th - when they don't have
17 this image of Chong Lee checking in at 6:43 a.m., the
18 day of the shooting. And you can examine it for
19 yourself, but the coat he's wearing here at 6:45
20 a.m., I think Sergeant Rabas testified, does not
21 appear in any way to be consistent with the coat we
22 see on the Luna videos.

23 Then we have the coat. A coat taken at the
24 house, because can you imagine a case where they
25 don't take anything, they don't know if it's relevant

1 so they're going to take anything and everything is
2 what was told to you. Sergeant Rabas never said he
3 had the opinion this coat was the coat the defendant
4 was wearing. And we talked about fabric and sleeves.
5 Fabric of this coat all the way up the sleeve is the
6 same. The portion that comes across on the
7 shoulders, same fabric goes around the neck, down the
8 front of the coat, same fabric is on each pocket, on
9 each side, striping across that shoulder -- same
10 fabric across the shoulder down the sleeve. All of
11 those areas would have shown up the same on the
12 video. When you see the video image of Chong Lee,
13 this is not the coat based upon the fabric that's
14 depicted here. Defense wants to make an issue of the
15 fact that, well, then they sent this coat for
16 testing, even though we didn't believe. Could you
17 imagine if we didn't send it? We sent it because we
18 didn't believe it was the coat, because if we hadn't,
19 you'd certainly hear about it. Oh, my God, they
20 collected a coat from the defendant's house and they
21 never sent it down for testing.

22 What does DNA tell us on all of this stuff?
23 There's nothing. There is no -- there is a blood
24 test done, there is nothing. Sergeant Rabas
25 testified about the timing when this was done. The

1 trial date was far off. There is no requirement in
2 ten days, five days, three days you send stuff when
3 they don't have a belief this is the coat, and when
4 the lab has certain procedures about what you can and
5 can't send.

6 Defense wants to suggest there was a lot of
7 police pressure on them, keep downtown safe, they
8 need to solve this case right away. They're doing
9 their jobs. They're doing what everybody would
10 expect them to do. They're doing -- when you get
11 people who lie to you and say I'm not there, I don't
12 know anything about it, and they know they're in the
13 area, they're going to push them. These people don't
14 want to say what happened, but they didn't do it in a
15 way that produced anything but the people telling you
16 what they saw and heard.

17 Talk about Paul Lee's testimony. She says, well
18 you didn't see the defendant Paul Lee sleeping. What
19 was shown was a small portion between a break of two
20 interviews. We didn't fast forward, and you probably
21 would remember, from the end of the 2:19 a.m.
22 interview until 11:58. You didn't see seven, nine --
23 I'm sorry, nine hours of Paul in that room. You saw
24 a small snippet. So when Paul says he's sleeping, he
25 could have been sleeping in that other portion.

1 But again, why is that relevant? It's something
2 I think that takes your focus off of what it should
3 be on. Why is Paul hesitant when he comes in to
4 testify? Look what this defendant has said to him on
5 the phone calls. Look what Teng and the defendant
6 said in the phone calls. You know they're not going
7 to want to come in if your brothers are there. We're
8 going to watch them, there's a conversation about
9 that in one of the phone calls. If this is a case of
10 Paul having a family feud with Chong, why doesn't he
11 at 20 minutes into the interview at Norka say, here's
12 the deal, my brother did it and I'm going to tell you
13 all the reasons why. Because it isn't about a family
14 feud, it's about a brother who doesn't want to have
15 to give up his brother.

16 A lot of questions during closings by defense
17 about this punch of Paul. Paul may have had - let me
18 grab a pen - we would probably argue had that
19 e-cigarette in his hand when he's getting in this
20 argument. But if you're going to punch at somebody,
21 the top of your e-cigarette, unless - it's going to
22 seem very awkward to me to do - you go like this
23 isn't going to hit Josh's chin. He thought he maybe
24 knicked him. What is he described doing? Stepping
25 back. Joe Thor says he steps back like this because,

1 guess what, he just missed. And do you think Josh is
2 probably upset at that point? So he's stepping back
3 like this, Paul and -- or Paul's pushing Phong and
4 Joe back against that wall. Tou Shoua, what does he
5 describe. Seeing Paul punch the guy and then step
6 back. Five, ten seconds, Chong walks in, right hand
7 goes as if it's going to punch Josh on the left side
8 of his face and then boom.

9 Yeah, Chue Thao laughed during Paul's interviews
10 because it was at the point when Paul described,
11 what, was a bullet going to fly around the room like
12 in movies. That's when Chue Thao laughed, Sergeant
13 Thao.

14 Paul Lee's statement. Defense showed you his
15 statement and then showed you in essence what was the
16 summary Sergeant Schira did. I'm going to pull it
17 out. My daughter loves colors. Okay? Remember we
18 walked through Paul Lee's statement. I highlighted
19 one line, and then we walked through the interviews
20 to show everywhere Paul had talked about all of these
21 things prior to the time of Sergeant Schira
22 summarizing. So I think the defense statement that
23 he just repeated what Sergeant Schira said, no, he
24 repeated what he had just told them over the last
25 several hours. It isn't that this is exactly what

1 Sergeant Schira said and it only comes from that, it
2 comes because I walked you through it.

3 Yesterday when Sergeant Thao was on the stand,
4 Tou Shoua's statement was attacked. Well, isn't it
5 true Sergeant Thao was asked, you just summarized at
6 the end. He said, yeah, I did, like I do with most
7 people. But I asked Sergeant Thao, if we walk back
8 through that interview, would all of those things be
9 found there. I didn't want to do another pink and
10 yellow highlight for you. Sergeant Thao said, yeah,
11 because those are all the things Tou Shoua talked to
12 me about during that interview.

13 It doesn't just so happen that Chong
14 intentionally shoots Josh in the head, goes to
15 Milwaukee, and then, according to defense, when he
16 had nothing to do with it, they're going to claim
17 then he's going to go to Milwaukee and tell people
18 he did it. Who brags about shooting someone? Use
19 your common sense and life experiences. I mean, he
20 might brag about, what, a car or if he had a house or
21 how much money, but who says to three different
22 people in Milwaukee, I popped the guy, I shot the
23 guy. And they were specifically asked, Xai Thao was
24 asked, when that comment was said, what was his
25 demeanor. He was scared when he was saying it.

1 Defense asked, did you believe him. Well who would
2 believe somebody would be so cold to kill someone and
3 the next day just go randomly talk about it. It's
4 not like he was, ha, ha, this is funny and let's
5 laugh about it.

6 Stephanie said he was scared when he talked
7 about this. Defense wants to make an issue over the
8 fact that Stephanie and Melanie went out for dinner
9 with him two nights in a row after he had said this
10 once. Stephanie still talked to him a ton after he
11 was upstairs, after this case had been charged, on
12 the jail phone calls you heard her. Stephanie my
13 love, Melanie, my love. You heard Chong and Teng
14 joking and laughing about that. Stephanie and
15 Melanie talk about the defendant saying he broke up
16 the gun, he threw it in the lake. He described to
17 Stephanie what happened. The victim is going to
18 swing and his brother pissed him off, he was really
19 tall, and that's the guy he shot. That's what fits
20 the facts of this case. So it's not I did it, he
21 gives details that are supported by other people,
22 it's corroborated by what other witnesses have to say
23 in this case.

24 Defense wants to make an issue over the fact
25 that the police should have done other things, like

1 when Chong is in one room at the Appleton Police
2 Department, saying can you please come with me, or
3 say to Paul, can you please come to me and put them
4 in the same room together at the police department.
5 Or bring -- maybe bring Chong a phone and say, here,
6 we have a call from you for Paul, can you take that
7 call, we'll step out and let you talk to him. How
8 are they gonna do a one-party consent phone call
9 under those circumstances or put them together in the
10 room?

11 Lisa Stutzman was asked to come in and talk
12 about the opinion she gave to Alyson, the opinion
13 that Chong was involved or Chong was a shooter. She
14 was asked, is it also your opinion Paul is the
15 shooter or could be the shooter. I don't remember
16 which way it was phrased. Her answer, no.

17 Sergeant Thao told you in all these calls he
18 listens to and the different points, which are many
19 -- many are in Hmong, not English, and many or most
20 done not with his own inmate ID number so does he
21 suspect we're going to be track it that way or does
22 he realize that or does he think if he talks in a
23 different language we might not be able to pick it
24 up. But in those calls he's not bragging. Or when
25 Stephanie talks about Melanie talked about what you

1 told us at B-dubs and at Sushis, he never says I was
2 just bragging, don't you know I was just joking about
3 that. And I asked Sergeant Thao if any of the other
4 calls the defendant describes bragging. No. Never
5 says this accidentally went off. I asked him if he
6 ever talked about it being an accident. No. In the
7 jail calls defense can try to say there wasn't intent
8 or he didn't -- on the intimidation charge he didn't
9 mean it. Why don't them two just fucking don't even
10 show up either. And his response, I know, you have
11 to tell them. Not a lot of other implications by
12 telling people that. Then the direct quote. Tell
13 them to disappear. Pretty direct you're attempting
14 to prevent or dissuade someone from coming in and
15 providing testimony at a hearing.

16 You also have to remember when we talk about
17 this area, this corridor, okay, we know from the cell
18 phone video, and I'm not going to play that video,
19 but we know Josh's body is by this half wall.
20 Officer VanderWielen at some point, because I asked
21 him to, Officer VanderWielen -- I said where on this
22 half wall. He described for you this half wall
23 coming out and that being about Josh's mid-chest. So
24 his chest was on this side, his feet are pointed this
25 way. You have to remember the drawing Tou Shoua did

1 has this area recessed. The wall comes directly out.
2 Paul Lee does two drawings. Defense showed you the
3 first one that he was talking about. Paul Lee does
4 the second drawing.

5 THE COURT: Counsel, do you need lights
6 down?

7 ATTORNEY SCHNEIDER: I'm trying not to make
8 you get up, Judge. I don't think so.

9 Paul Lee does a second drawing at the police
10 department when he's now talking about who has done
11 things. He puts the victim right here by the V, Paul
12 and Phong, consistent with where Josh is found when
13 officers arrive. I don't think there is anybody in
14 this case that would try to allege anyone dragged
15 Josh's body from this point to the half wall. You
16 got to look at this. 11 feet by 16 feet. You have
17 all of those people packed in this area. Probably
18 not much bigger than the area of a freethrow lane.
19 You have all those people packed into that area.

20 I want to talk to you and have you compare a
21 couple things in this case. First, the fact that
22 Brittany -- it was brought up during closings somehow
23 that Brittany was out of control, you know, she tried
24 to fight with the people to get back in Luna. What
25 would you do? This person you loved had been shot in

1 front of you for no reason, you go outside, would you
2 fight your way back in to get by your loved one?
3 Heck 'ya. She was emotional. She was shocked by
4 what had happened. She wanted to be by Josh, she
5 wanted to go back in to see him. She described
6 kneeling down by him.

7 It's interesting because when you look at that
8 time period, okay, who does Brittany see come into
9 this area in the thirteen seconds before Josh is
10 shot? Alyson walking with Chong. So the last people
11 Brittany sees together in that area are Alyson and
12 Chong. That's where they are. So does it make sense
13 when Chong then walks up to Josh and pops him in the
14 side of the head she immediately runs after her,
15 tries -- and tackles her and says your boyfriend shot
16 my friend or your boyfriend shot my boyfriend?
17 Because based upon what she'd just seen, that's a
18 reasonable inference for her to make.

19 And then you look at Alyson, who, one, shocked
20 that she saw this flash in front of her eyes and then
21 saw Josh go down, runs out, then she gets tackled and
22 beat up. So while she's yet probably not processing
23 everything she's seeing, when she's still extremely
24 emotional from being beat up, Johnny says to her,
25 what was that all about. Her response is, my friend

1 shot that guy. Powerful statements that come very
2 early on in the sequence of this case.

3 I also want to point and highlight some things
4 to you, and you can use your common sense and your
5 life experiences when you think about this. Police
6 come talk to you and you have not done something --
7 something significant like a shooting. How are you
8 going to respond? Are you nuts? Are you crazy? Are
9 you saying it was me? I didn't do this. Are you
10 going to get loud with them? Are you going to yell
11 at them? Yes. I wasn't the shooter. I didn't have
12 a gun. I think all of you would agree, and I think
13 the evidence and testimony supports that's Paul's
14 reaction because Paul is not the shooter. Paul did
15 not have a gun. You compare that with the
16 defendant's interview. Laughing. Yawning. I think
17 we fast forwarded a short period of time where he
18 left, he turns around and puts his feet up against
19 the wall. Big guys don't go down the same. Murder
20 is murder. A killer is a killer. There is no
21 difference.

22 And then we have the letters that I am certain
23 were probably never expected we were going to find.
24 Or phone calls. And the phone call on December 12th
25 at 7:31 is not if my mom -- if mom hadn't asked me to

1 stay I would have moved to California, I would have
2 taken that trip. The comment is, if mom didn't tell
3 me to stay I would have disappeared already, you
4 know. It's not, the State would believe, his comment
5 that, oh, you know, I was going to take that vacation
6 and mom asked me to stay. No. If mom hadn't asked
7 me to stay, I would have disappeared already.

8 We have the letter he writes to Paul, which Paul
9 from a phone call I think got tore up, thrown in the
10 garbage. I ain't even mad at you, little bro. Don't
11 worry about nothing. I'll be all good in the end.
12 You live to die anyways. It's what you do in the
13 end, that's what counts. Also remember what you told
14 me when Mao and Steph and them arguing. You said, if
15 you don't got family back, then don't consider us
16 family. Well I had your back. I wouldn't let no one
17 touch you. But remember your words. You didn't have
18 my back, little bro, and that's the only thing you
19 failed me.

20 Phone call January 8th, 2014. It's a phone call
21 with Stephanie and the defendant. Stephanie: We
22 showed you the whole thing, but she ends the
23 sentence, misses you inaudible. Joe really does love
24 you too. Chong: Loves me, yeah. More like kill me.
25 Like I was telling him and Paul inaudible I can just

1 use my gun and shoot. Bang. And kill you two, you
2 know.

3 ATTORNEY VISHNY: Judge, at this point, I'm
4 sorry to interrupt, counsel, but I would like to
5 approach.

6 THE COURT: You may.

7 (Bench conference.)

8 ATTORNEY SCHNEIDER: There's been a request
9 to show you that whole content, and we'll show it to
10 you. We showed it to you earlier.

11 There's talk about taking down his Facebook
12 account. Stephanie: I think someone deactivated
13 your Facebook today. I don't see Joe post. Oh,
14 yeah. He loves me a lot. Stephanie: He writes on
15 your wall every day. You know he writes on your wall
16 every day that he misses you. Inaudible Joe really
17 does love you too. Chong: Loves me, yes. More like
18 kill me. Like I was telling him and Paul inaudible I
19 can just use my gun and shoot. Bang. And kill you
20 two, you know. Stephanie: Yeah. Chong: Those two.
21 It's so heart breaking. I don't even want to talk
22 about them.

23 At the end of many of the witnesses, either
24 myself or Attorney Maier, I think Attorney Duros as
25 well, asked them, is what you told us today what you

1 saw or what you heard. Their answers were yes. So
2 despite if law enforcement had to say, you know, this
3 is significant, serious, you need to tell us what's
4 going on, is what you told us today what you saw and
5 what you heard. Yes.

6 Another call -- or another letter this defendant
7 writes to Michael Thor. I don't look for trouble,
8 but when trouble comes, I end it. That's why I don't
9 really want to hang out with trouble seeking people
10 'cause I know myself. No hesitation. I do
11 everything the smart way. I make sure I had a way
12 out. I never thought my family would do this to me.

13 The defendant in this case, I would believe
14 based on the phone calls and the letters, never
15 thought his family was going to say what happened,
16 that Joe wasn't going to come -- overcome his being
17 scared, Phong was going to get over being a snitch or
18 Paul was going to talk about what Chong did.

19 Thirteen seconds. Thirteen seconds of time.
20 That cell phone video. Defense can say it was not
21 loud or it was easy to see. Not often we can
22 literally take you back to the time when someone's
23 been shot. We showed you how dark it was, how
24 chaotic it was, how loud it was. Loud enough you can
25 make out the words of the song. Wake me up when it's

1 all over. The song continues, when I'm wiser and I'm
2 older. In this case, unfortunately, there is no
3 waking up for Joshua Richards because of what Chong
4 Lee did on December 8th of 2013.

5 There are words that you can use to describe
6 what happened, tragic, a nightmare, person who runs
7 from the scene after, unfathomable, incredible,
8 horrible, beyond reckless, cold, callous, an
9 execution, intentional; and I think there is one
10 final word the State has shown beyond a reasonable
11 doubt that you can attribute to the defendant and his
12 actions on this night and those that follow and that
13 word is guilty.

14 I'm asking you to return a guilty verdict for
15 first-degree intentional homicide, for possession of
16 firearm by a felon, and for the four counts of
17 intimidating a witness.

18 Thank you to so much for your time and attention
19 over these last several days.

20 THE COURT: Thank you, Counsel.

21 Just a few brief instructions before we begin
22 your services and deliberation.

23 Now, members of the jury, the duties of counsel
24 and the court have been performed. The case has been
25 argued by counsel and the court has instructed you

1 regarding the rules of law which should govern you in
2 your deliberations. The time has now come when the
3 great burden of reaching a just, fair and
4 conscientious decision in this case is to be thrown
5 wholly upon you the jurors selected for this
6 important duty.

7 You will not be swayed by sympathy, prejudice or
8 passion. You will be very careful and deliberate in
9 weighing the evidence.

10 I charge you to keep your duties steadfastly in
11 mind and as upright citizens to render a just and
12 true verdict.

13 You are to decide the case fairly and
14 impartially without fear or favor and without passion
15 or prejudice. You are to decide only whether the
16 defendant is guilty or not guilty of the offenses
17 charged.

18 Any consequences of your verdict are matters for
19 the court alone to decide and must not affect your
20 deliberations.

21 Now, a form of the verdict will be submitted to
22 you concerning the charges against the defendant,
23 Chong Lee.

24 As to Count 1, three forms of verdict will be
25 submitted. One reading: We the jury find the

1 defendant Chong Lee guilty of first-degree
2 intentional homicide as charged in Count 1 of the
3 information.

4 The second or another reading: We the jury find
5 the defendant Chong Lee guilty of first-degree
6 reckless homicide, a lesser included offense, as
7 charged in Count 1 of the information.

8 And the third reading: We the defendant (sic)
9 find Chong Lee not guilty as to Count 1.

10 You are not, in any event, to find the defendant
11 guilty of more than one of those foregoing offenses.

12 If you are not satisfied beyond a reasonable
13 doubt that the defendant committed either one of the
14 offenses I have submitted to you, you must find the
15 defendant not guilty.

16 As to Count 2, one verdict form will be
17 submitted. One reading: We the defendant (sic) find
18 the defendant Chong Lee guilty or not guilty of
19 felony (sic) in possession of a firearm as charged in
20 Count 2 of the information.

21 As to Count 3, one verdict form will be
22 submitted. One reading: We the jury find the
23 defendant Chong Lee guilty or not guilty of party to
24 the crime intimidation of a witness as charged in
25 Count 3 of the information.

1 As to Count 4, one verdict form will be
2 submitted. One reading: We the jury find the
3 defendant Chong Lee guilty or not guilty of party to
4 the crime intimidation of a witness as charged in
5 Count 4 of the information.

6 As to Count 5, one verdict form will be
7 submitted reading: We the jury find the defendant
8 Chong Lee guilty or not guilty of party to the crime
9 intimidation of a witness as charged in Count 5 of
10 the information.

11 As to Count 6, one verdict form will be
12 submitted. One reading: We the jury find the
13 defendant Chong Lee guilty or not guilty of party to
14 the crime intimidation of a witness as charged in
15 Count 6 of the information.

16 It is for you to determine whether the defendant
17 is guilty or not guilty of each of the offenses
18 submitted to you.

19 You must make findings as to each count of the
20 information. Each count charges a separate crime and
21 you must consider each one separately.

22 Your verdict for the crime charged in one count
23 must not affect your verdict on any other count.

24 Now, because this is a criminal and not a civil
25 case, before you the jury may return a verdict which

1 may be legally received, the verdict must be reached
2 unanimously. In a criminal case, all twelve jurors
3 must agree in order to arrive at a verdict.

4 When you retire to the jury room, select one of
5 your members to preside over your deliberations. The
6 presiding juror's vote is entitled to no greater
7 weight than the vote of any other jurors.

8 If you need to communicate with the court while
9 you are deliberating, send a note through the bailiff
10 signed by the presiding juror. To have a complete
11 record of this trial, it is important that you
12 communicate with the court only by a written note.

13 If you have questions, the court will talk with
14 the attorneys before answering so it may take some
15 time. You should continue your deliberations while
16 you wait for an answer, and the court will answer any
17 questions in writing or orally here in open court.

18 When you have agreed upon your verdict, have it
19 signed and dated by the person you have selected to
20 preside. After you have reached a verdict, the
21 presiding juror will notify the bailiff that a
22 verdict has been reached. Everyone will return to
23 the courtroom, the verdict will be read in the record
24 in open court, and the court may ask each of you if
25 you agree with the verdict.

1 Now, as you may have surmised from this last
2 instruction, this case is to be submitted to twelve
3 jurors. There are thirteen of you. We have
4 maintained an alternate throughout this proceeding in
5 the event that someone would become unavailable or
6 some other circumstance would prevent participation.

7 That said, what I want to assure you that your
8 role in being available, although you will not be
9 participating in the deliberations, is no less
10 important than anyone who has already participated or
11 will be participating in the deliberations. Your
12 role has been instrumental in allowing the attorneys
13 and myself to focus on the matters at hand, and so
14 although you will not be participating in the final
15 deliberations, nonetheless, I want to espouse my
16 deepest gratitude on behalf of myself, the attorneys,
17 and the county for your service up to this point.

18 So at this point I will ask my clerk to randomly
19 select.

20 THE CLERK: No. 34, Emily Vandenberg.

21 THE COURT: Miss Vandenberg.

22 Miss Vandenberg, again, I greatly thank you for
23 your service and your time.

24 Please rise for Miss Vandenberg. Miss
25 Vandenberg, you are excused at this time.

1 (The selected juror was escorted out of the
2 courtroom.)

3 THE COURT: At this time could we please
4 swear in the bailiff.

5 THE BAILIFF: She's free to go?

6 THE COURT: She is. And if we could have
7 you back as quickly as possible, that would be
8 appreciated.

9 At this time please swear in the bailiff.

10 (Oath administered to bailiff.)

11 THE COURT: Madam Bailiff, if you would
12 please come forward, I do have for you a copy of the
13 instructions as well as the verdict forms.

14 THE COURT: Please remain standing while we
15 excuse our jury.

16 (The jury was escorted out of the
17 courtroom.)

18 THE COURT: Anything, Attorney Schneider,
19 we need to address?

20 ATTORNEY SCHNEIDER: I just don't know if
21 we want to agree on some exhibits that can probably
22 go in right away, some that can go in without you
23 needing to consult with us, and some we want to be
24 consulted about?

25 THE COURT: And just so that the -- so

1 Attorneys Vishny and Schneider were aware, I did talk
2 to Attorneys Weitz and Maier. As you may have
3 noticed, I included I think it was Instruction 460
4 which I incorporated 465 and so I did provide both of
5 those.

6 ATTORNEY SCHNEIDER: Yup.

7 THE COURT: The gallery may be seated if
8 you would like to. If you would like to stand,
9 whatever your preference is at this time.

10 ATTORNEY VISHNY: I don't think they should
11 be in the jury room without being asked for. I think
12 they're going to ask, but I have no objection to
13 anything in that pile of photographs, any of the
14 photographic evidence or diagrams that go into the
15 jury room, it's not an issue.

16 The -- you know, I think the more complicated
17 questions become -- and I also don't object to
18 diagrams that the police -- I think Miss Schneider is
19 holding quite a few of them.

20 ATTORNEY SCHNEIDER: Two of them.

21 ATTORNEY VISHNY: I don't object to
22 diagrams or the photograph from the Hilton hotel. I
23 don't object to that going in. I don't object to an
24 examination of the clothing or the e-cigarette or the
25 bullets, that kind of -- that would be fine.

1 THE COURT: I think the transcripts are
2 going to be the big issue.

3 ATTORNEY SCHNEIDER: Even the jail calls,
4 because we have to identify which one, or if they ask
5 for letters.

6 ATTORNEY VISHNY: Anything statement
7 oriented is going to have to have substantial
8 redactions and probably readbacks because, yeah, I
9 can't say that I know from memory what happened, so I
10 don't --

11 THE COURT: I don't.

12 ATTORNEY VISHNY: And the jail calls are
13 very problematic with the redactions. You know, I --
14 my opinion would be we'd be better off in many ways
15 with readbacks.

16 (Further proceedings held in a separate
17 transcript reported by Gloria Johnson.)
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C E R T I F I C A T E

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5 STATE OF WISCONSIN)
6 COUNTY OF OUTAGAMIE) ss.:

7

8

9 I, JOAN BIESE, RMR/CRR, do hereby certify that I
10 am the official court reporter for Branch IV of the
Circuit Court of Outagamie County;

11 That as such court reporter, I made full and
12 correct stenographic notes of the foregoing proceedings;

13 That the same was later reduced to typewritten
form;

14 And that the foregoing proceedings is a full and
15 correct transcript of my stenographic notes so taken.

16 Dated this 23rd day of August, 2016.

17

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JOAN BIESE, RMR/CRR

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